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ABSTRACT

This document reports the proceedings of a conference sponsored by the Institute of Management and Labor Relations at Rutgers University concerning collective bargaining and some of the implications of formal bargaining relations in higher education. Presentations include emerging patterns of faculty bargaining; collective bargaining in higher education: its impact on campus life and faculty governance; faculty bargaining and traditional governance processes at Central Michigan University; grievance procedures under collective bargaining in higher education; resolving faculty grievances at Rutgers University; and the experiences of CUNY grievance procedures. (MJM)

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ACADEMICS at the BARGAINING TABLE: early experience

James P. Begin, Editor
Associate Research Professor
Institute of Management and Labor Relations

Proceedings of a conference held on October 26, 1972
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INTRODUCTION

In the last decade, a period of great unrest for institutions of higher education in the United States, faculties in a number of institutions of higher education have chosen collective bargaining agents to represent their interests. The faculty bargaining movement in two-year colleges is well underway. A review of statistics collected from several sources indicates that the faculty in one-fifth of all two-year institutions in the United States are now represented by bargaining agents. While the bargaining movement has spread to four-year colleges and universities, the growth has not been rapid, particularly in private institutions where Joseph Garbarino indicates that "no union" votes have won in one-third of the elections. Since the first four-year institution was organized slightly over five years ago, only about six percent of all four-year institutions have been included in faculty bargaining units. When this information is coupled with the low percentages of the faculty which have joined unions in four-year institutions where there are bargaining units, it is not clear that faculty in four-year institutions are completely convinced. Nevertheless, a trend towards bargaining is evident.

Given the important consequences which many have predicted for institutions of higher education as a result of the faculty bargaining movement, it seemed propitious to bring together representatives of university administrations and faculties around the country now in the early stages of

collective bargaining for discussion of some of the implications of formal bargaining relations. Among those responding to an invitation to the conference were administration and/or faculty organization officials from most of the four-year institutions or systems under contract in the Fall of 1972.

The morning session of the one-day conference was devoted to the problem of accommodating existing modes of university governance to the collective bargaining process. Discussion took account of one of the most common generalizations concerning the impact of faculty bargaining: that the traditional modes of faculty participation -- the senate, the committees, the peer judgment process -- will deteriorate in competition with formal bargaining arrangements. The afternoon session dealt with another subject of prime importance in regards to faculty bargaining -- negotiated grievance handling systems. Negotiated faculty grievance mechanisms constitute a major avenue through which faculty bargaining is expected to modify practices at the department or school level as faculty peer decisions are challenged through the grievance process.

The format for each of the sessions provided for an opening paper treating the issue in broad scope and followed by two papers dealing with experience in universities which have confronted the issue in practical terms. The institutions whose experience was described (Central Michigan, CUNY, Rutgers, Massachusetts State College System) are among the universities with the longest record of formal bargaining.

Joseph Garbarino, Professor of Business Administration, University of California, led off the morning session with a paper discussing the emerging patterns of organization and the impact of faculty bargaining. He was followed by Donald Walters, Deputy Director, Massachusetts State College System, who discussed the Boston State and Worcester State College agreements in which the governance procedures were established by and incorporated into the collective bargaining agreement. Next, Joyce Pillote, former President and member of the bargaining team of the Central Michigan University Faculty Association, discussed attempts at Central Michigan University to retain dual procedures for faculty bargaining and faculty governance.

The afternoon session on grievance mechanisms was led off by Jack Chernick of the Institute of Management and Labor Relations, Rutgers University, who addressed the conference on the long-range implications of introducing on the campus formal grievance systems tied to a collective bargaining contract. The experiences with grievance procedures at Rutgers University were presented by Richard Laity, Vice President and Chairman, Committee A, of the Rutgers AAUP Chapter. Reporting on the experiences at the City University of New York, where there have been over 200 cases filed for arbitration during the first three-year contract, was David Newton, Vice Chancellor of Faculty and Staff Relations, City University of New York.

The Institute staff members responsible for the conference express deep appreciation to the speakers and to Alden Dunham who chaired the morning session, for the important contribution they made to understanding the faculty bargaining process. We wish also to acknowledge the editorial contribution of Jake Cook in the preparation of the Conference proceedings.

James P. Begin
Associate Research Professor
Institute of Management and
Labor Relations
Rutgers University

EMERGING PATTERNS OF FACULTY BARGAINING

Joseph W. Garbarino
Professor of Business Administration
University of California, Berkeley

Almost twenty years ago sociologist Daniel Bell described the process by which unionism expanded as one of eruption, extension and enforcement. At the time the prototype of the process of "eruption" was the period of the 1930s when the union movement burst from the boundaries of the craft industries to penetrate the mass production sector of the economy. "Extension" in this context means the expansion of organization from the point of eruption in the new territory to the other establishments in industry, while "enforcement" was Bell's alliterative description of the process of enforcing universal membership by bringing all the employees in the recognized bargaining unit under the union shop or some other form of compulsory membership.

The past decade has seen another major eruption of unionism, this time in the hitherto largely invulnerable public sector, particularly among teachers and including faculty in higher education. We are now in the extension phase of this penetration with organization expanding to new jurisdictions. The enforcement phase will depend on the availability of agency or union shop arrangements and this lies ahead, possibly a considerable distance ahead.

In higher education, organization first appears in the two year colleges as part of the general move to unionization among teachers in the public schools.[1] Within a few years the movement spread to four-year institutions, the

landmark event being the victories of the unions in the massive City University of New York system in the elections of December 1968. For a variety of reasons, some merely a matter of convenience, unionism in the four-year colleges has attracted most of the interest of researchers and the public. Unless otherwise noted, the discussion in this paper will follow this trend, concentrating on the four-year schools.

In evaluating the status of faculty unionism at this time, it is clear that we are well past the eruption stage. My own contribution to the numbers game of estimating the prevalence of bargaining suggests that there are somewhere around 75,000 individuals currently represented by recognized bargaining agents in all institutions of higher education, about three quarters of them in four-year systems. More important than the numbers involved, unions are clearly going concerns entrenched in several major institutions and geographical areas with a high degree of visibility. There seems little chance that the eruption will subside, permitting the landscape to return to its former relative tranquillity.

If it is true that we have moved through the eruption stage and are into the extension phase of the faculty union movement, can anything be said about the pace at which future extension of organization is likely to occur? Up to the present, the pace of extension appears to be relatively sedate compared to the explosion of organization that followed the passage of the Wagner Act in 1935 or even compared with the expansion of unionism in the public schools at the beginning of the 1960s. The pace appears to be quickening with perhaps a dozen elections scheduled or in prospect for the next few months.[2] Even if "no organization" wins in some of these, it is probable that the current academic year will see a substantial increase in the number of organized campuses in the country. Really significant increases in the numbers of faculty covered, however, depend on the conquest of major systems or supersystems of public universities none of which are scheduled at this time. CUNY and the State University of New York still account for almost 40 percent of all of the coverage under collective bargaining in higher education.

In geographical terms the action still remains centered in the northeastern states, particularly New York, Massachusetts, New Jersey and Pennsylvania, and in Michigan in the

Midwest. California is the sleeping giant of faculty unionism and there is a very real possibility that the giant may be roused from its slumber in the next year, when a revised revision of the public employee bargaining law will be considered. The three systems of public higher education in California employ about 45,000 teaching faculty, almost 24,000 of them in the massive 92 unit community college system. The United Professors of California, the AFT affiliate operating in the state college system, may well be the faculty union with the largest membership of regular faculty members in the nation. Strictly speaking, about 40 percent of California community colleges were engaged in "collective negotiations" through negotiating councils as early as 1966-67 under the state's education law. Four years after the passage of New York's Taylor Law, virtually all of public higher education in the state was organized. If California should adopt a collective bargaining law that reproduced anything like those results, the impact on the faculty bargaining movement would be dramatic.

The dependence of the extension phase of faculty unionism in public institutions on the legal framework provided by the state laws is clearcut. The role of the National Labor Relations Act in the private sector of higher education has been developing steadily but unspectacularly. Because the federal law applied throughout the nation, it has the potential of introducing faculty bargaining into areas without local laws providing for public employee bargaining. There has been some stirring under the federal law in states without strong collective bargaining laws applicable to higher education (e.g., Iowa and Washington), but on the whole, the relative lack of activity under the National Labor Relations Board's jurisdiction since it was extended to higher education in 1970 reminds us that factors other than the applicable law are important in explaining the incidence of bargaining. It is too early to tell, but it may be that there are systemic differences between the private and the public sectors of higher education that will lead to different experience. For example, seven of the eight "no union" victories in four-year schools to date have occurred in private institutions. In almost one third of the elections in private colleges faculties have rejected organization.

Finally, the enforcement phase of the growth process is barely in sight in the form of the agency shop. One or two

community colleges have negotiated agency shop agreements and the Hawaii law calls for a near-equivalent of the agency shop in the form of a mandatory service fee should an exclusive bargaining agent be chosen. It would be interesting to determine what effect this new element in the election process will have on the results of the balloting soon to take place in Hawaii. Very little information is available on the number of dues paying members enrolled in the bargaining organizations. Contracts with the organizations in the first several of the units to be organized leave the impression that fewer than half of the total membership of the bargaining unit are actually members in the usual case. This has important implications for the credibility of the bargaining agent particularly if the various occupational groups in the overall unit are not represented in the bargaining agent's membership in something like the appropriate proportions. In September of 1972 in the midst of deadlocked negotiations, the newly merged Professional Staff Congress in CUNY reported a membership of about 6,000 from the approximately 16,000 eligibles in the unit as a whole. In the spring of 1972 at the time of negotiations of a reopening of the contract, SUNY's bargaining agent, the Senate Professional Association, was reported to have about 3,000 members from the 13,500 eligibles in that system. Some of the more cynical observers of faculty behavior suggest that mass membership in faculty unions will require either the experience of a wave of major atrocities against the professoriate or the general achievement of agency shop provisions in contracts.

Functional Types of Faculty Unions

With some forty-odd four-year institutions organized, three different functional types appear to be identifiable. They might be classified as follows:

1. Defensive unionism. The distinguishing features of this type are the prior existence of a fairly well established tradition of faculty participation in governance with the machinery in place to implement the process. In the late 1960s a combination of pressures appeared that seemed to threaten the position of faculties. The list of pressures is well known and includes general financial stringency, student challenges to faculty authority, legislative and public criticism of work loads and job tenure, the weakening job market, and the development of integrated systems of

higher education in several states. Faced with these (and other) threats to their achieved position, some faculties organized to defend their status. They were interested in converting what had been a relatively informal system of delegated authority, with the understanding that review powers of higher authority were in practice pro forma, and with de facto professional autonomy in appointments, promotions, and a host of other academic matters, into one with firm commitments that would have the weight of binding contracts if these could be negotiated.

Examples of these situations are almost always single campus institutions and there seems to have been little real change in the way the affairs of the institution have been conducted. If a major conflict develops, in the future it may be dealt with in a way substantially different under formal bargaining with a faculty union than would have been the case if the former system of governance were unchallenged in the field. To date, however, collective bargaining may have brought changes in the way things are done, but the substance of decisions has not been substantially altered. The status quo has been institutionalized, but not disturbed in any fundamental way. Until a major crisis develops in these situations, it may not be clear whether the former system of governance has been absorbed into the union system, or whether the two are functioning in peaceful coexistence, each operating in separate spheres of interest.

2. Constitutional unionism. This phrase refers to a variety of unionism that has appeared in some institutions with little of the traditional faculty governance arrangements prior to union organization. This may have been because they were new institutions or were institutions so drastically changed from their original form or function as to be the equivalent of new institutions. They may be either single campus units or multi-campus units of a homogeneous type such as the Massachusetts or the Nebraska State College systems.

In the absence of viable traditional forms of governance, the union is accepted from the start as the basic arm of faculty participation. The union represents the faculty in the "constitutional convention" stage of developing the system of governance. The governance system is the product of

bargaining and is contractually based. Under these circumstances, the mechanisms of government that emerge are likely to either be explicitly joint union-administration bodies with union officials functioning as official representatives or, if there are consultative committees, the union names the members of the faculty that will participate in the process. The union explicitly controls the process of faculty participation in institutional governance.

How do these arrangements differ from those that are characteristic of traditional faculty senates which also have constitutional status? It may be that where administration-union relationships are placid that the differences will be minor. In general, however, the union is likely to have a different attitude toward the administration, one more independent and probably more adversary in tone. No administrators will be found among the membership, the agenda of the organization's concerns is likely to be different and to be more responsive to the discontents of relatively smaller aggrieved sectors of the constituency. Leadership style and attitude will be more oriented to the membership and less to the academic establishment both within the faculty and within the administration. If the institution is large and the union active, professional nonfaculty leadership may be employed to handle the day-to-day affairs on a continuous basis. They will certainly appear during contract negotiations and at crisis periods. The union will tend to monopolize the representation function, challenging the legitimacy of any consultative mechanisms such as administrative committees whose membership has not been selected and is not accountable to the union.

Whatever its form, faculty governance machinery tends to be dominated by a relatively small group of activists. The identity, the attitudes, and the goals of the activists who wield influence in unions are all likely to reflect a structure of interest groups and political forces different from those typical of the more traditional bodies. At the risk of over-simplification, the basic source of the differences between senates and unions is that senates have been typically designed from the top down, while unions are usually designed from the bottom up. The internal dynamics of a membership organization dependent on winning election victories and on continuing votes of confidence in the form of dues payments, are inevitably different from those of

more organizationally and financially secure organizations. The levers of power in unions are likely to be located in different places and to be accessible to different and more varied interest groups.

3. Reform unionism. In a sense any type of unionism that produces changes in established practices of institutional operation could be called "reform" unionism. The justification for creating a special category under this title is that the degree and the scope of change produced are significant enough in some institutions to warrant the creation of a separate class.

The obvious examples of reform unionism are those that appear in large complex institutions that are not only multicampus in nature but are made up of different types or levels of institutions. Both CUNY and SUNY are leading examples, and the tendency to place all the systems of higher education in a particular state into a single "supersystem" suggests that the number of these situations will increase. The relationships that are appropriate between the various sectors of the system must be structured with or without unionism, but the experience to date suggests that the injection of a faculty union into the process of decision making may have a substantial impact on the results. The question of "parity" in pay, benefits, and working conditions is sharpened, for example, and moves higher on the agenda of problems. This process is obviously related to the definition of the bargaining unit and is likely to be more important the broader the scope of unit in occupational terms. Problems that become grist for the bargaining mill include the question of differential compensation for medical and law schools, or pay differentials for similar academic ranks among community colleges, four-year general campuses and graduate centers, between teaching faculty and other academic professionals, and between academic and nonacademic job classifications.

The problems of what the British call "relativities" are not created by unionism and they exist irrespective of the structure of the bargaining unit or units that are established in the systems of higher education. In both SUNY and CUNY a single all-professional bargaining unit has been established for the system as a whole. This means that the relativity problem surfaces in the first instance as an

internal problem in the bargaining unit. The agenda of demands is easy to put together, but the order of priority that various elements of the package enjoy in the back rooms at the actual negotiating sessions is a political problem of the first order. It places a premium on the makeup of the negotiating team, and the interplay of personal relationships within the membership. Like most desirable items, bargaining power is a scarce resource, and there is a limit to the increases in costs that a union can impose on an employer at any particular time. Trade offs become the order of the day.

It is easy to make too much of the possible differences in outcome of the bargaining between a union conglomerate such as the Senate Professional Association and the SUNY administration compared with the possible outcomes of a hypothetical situation in which there are several different employee organization divided on occupational lines or by different levels of instruction. Some part of the problem of the priority of demands of different groups in the bargaining unit can be met by devices such as the rotation of issues in successive negotiations. American unions in the private sector have devised ways of reducing the inevitable strains that representation of a number of heterogenous constituencies produces. With experience, the internal decision making procedures can be brought into line with the appropriate distribution of internal political strength.

In any event, it is not necessary to evaluate the distribution of power in specific cases for our purposes. The key point is that the union provides the academic professionals as a group with a method of influencing decisions about the policies of the system as a whole that may be much more effective than the traditional approaches to faculty participation would be. The union's proposals will reflect the organizational realities of its internal power structure. The resulting demands may not only be different from those that would have been produced by an orthodox vehicle of participation, but may be either more or less congruent with the goals of the administration. Perhaps it is an illusion fostered by the much higher visibility of bargained settlements, but the impression persists that this variety of unionism has had considerable impact on systemwide decisions. As a "change agent," collective bargaining is likely to produce results that more traditional methods of "shared

authority" would be hard put to match, at least in the same time span.

A Case for Convergence?

At this point in the development of the faculty bargaining movement, the three types of unions discussed above are clearly distinguishable. It may well be, however, that this is a transitional phase and that they will evolve into other forms. There are two distinctly different forces at work. As more institutions are organized, the diversity of circumstances and of historical development can be expected to generate a wider variety of organizational types reflecting the tremendous variety to be found among American institutions of higher education. A range of different types of relationships will undoubtedly appear, but, in my opinion, at the same time, the three types noted above will tend to converge as the movement matures. If this happens, the dominant form that will emerge will probably be closest to what we have called constitutional unionism. Under most state laws as well as federal law, the unions have the legal right to monopolize the representation function for the members of the bargaining units. The union may choose to negotiate a role in some sections of the decision making process for other bodies such as faculty senates or more limited standing committees. In any such partnership the dominant member would clearly be the union.[3]

Experience in the private sector suggests that while the range of issues comprehended under the rubric of working conditions and terms of employment may not be indefinitely expandable, the limits do not seem to have been reached after almost forty years. There cannot be many issues of concern to faculty that would be considered clearly beyond the scope of collective bargaining. On any issue that is important to any substantial portion of its membership, a union cannot afford to delegate final and binding power of decision to another body. As an illustration, assume that a faculty union agrees to permit a senate committee of peers to make decisions on promotions to tenure. Sooner or later a case will almost inevitably arise which will produce a decision that the union will be unable to accept without internal political consequences it will not tolerate. Pressure for the union to recapture its legal control over these matters in the future, if not in the case at hand, will be impossible to resist.

The notion that faculty senates and faculty unions can coexist in the same institution with an agreed-on division of responsibility is really a different form of the concept of university governance by "shared authority." Shared authority traditionally refers to the situation in which the governing board, the de jure of the power to govern, agrees to delegate some part of this power to the faculty. A faculty union which is the exclusive representative of the faculty in bargaining over all the terms of employment may choose to delegate responsibility over certain academic matters to a faculty senate in a parallel form of shared authority. Many governing boards have over long periods scrupulously maintained the shared authority relationship, exercising their ultimate power to decide issues unilaterally only rarely if at all. In public universities, governing boards are typically much more insulated from political pressures from their public constituency than are the elected officers of a voluntary association. Yet periodically some of them have felt constrained to revoke their delegation of authority to prevent the implementation of certain specific decisions. It is hard to see how a union with the legal power to intervene can allow their junior partner in representation to make decisions that important segments of the union membership feel are wrong. There may be many institutions in which the issues that arise will not produce this type of conflict and shared authority in representation will work. If such cases come up fairly frequently and the senior partner feels it necessary to intervene in any but truly unusual circumstances, the process of decision on all but routine matters will tend to move directly to the forum where the real power lies.

The debate over whether a division of function between unions and senates can be established and maintained over time may well turn out to be one of those issues which, in retrospect, will be found to have had much more form than substance. Insofar as faculty unions succeed in winning some form of compulsory membership in the future, the whole question of distinguishing between the faculty as senate and the faculty as union may become virtually meaningless. In fact, as membership in the union rises above, say, 50 percent of the faculty, it becomes increasingly questionable whether attempts to distinguish between the two serve a useful purpose. One situation in which the distinction might be valuable is in the complex structures of what we have called

reform unionism. In this case, local senates might serve as a vehicle for faculty representation with certain delegated powers within the overall union structure on the campus.

One Man's View of the Implications of Current Experience

Perhaps the most important of the implications of experience with bargaining to date that strikes an outside observer is that the experience varies a great deal and that general conclusions should be expressed with caution. The argument in this paper has been that as the number of institutions that have been organized has grown, certain distinctive patterns can be discerned. But even a cursory knowledge of the background of the establishment of the various bargaining systems reveals that the historical evolution of bargaining reflects the local situation and the local personalities that have been active participants. Given the tremendous diversity of American higher education, this is only natural. Much of the public discussion of bargaining starts from an implicit assumption that unionism is being introduced into a situation characterized by an idealized system of faculty participation in institutional governance. For example, the discussions of the undeniable tendency of unionism to generate demands for what has been called "instant tenure" (the insistence that the failure to reappoint a nontenured faculty member must be the result of some form of "due process" and that the burden of proof of unsuitability is on the institution) usually assumes that this is a challenge to an existing system characterized by the judicious exercise of peer judgment based on relevant academic criteria applied in a systematic and objective fashion. The imposition of limitations on administrative or peer discretion at a major research university of the first rank will have very different results from the same restrictions imposed on a university system such as the large state system in which it is reported that 95 percent of the faculty hired in the 1960s routinely were granted tenure without any assistance from unionization.

There is no question that many colleges and universities have been operated under casual and often arbitrary administrative control. Given the increased pressures for cost reduction, increased "productivity" and institutional reorganization that exist today, faculty are justifiably concerned with the manner in which decisions are made and implemented. Among all the other demands for "accountability" from one

concerned constituency or another, it is valid to view unionization as the means by which faculty hope to hold administrations accountable to the academic professionals whose careers are at stake.

In spite of the diversity of experience, it is still possible to arrive at some general conclusions as to the consequences of introducing unionism into higher education. In my judgment, the most important of these are:

1) Increases in cost. The most obvious, but not necessarily the most important, increase in costs is the effect of unionism on the general level of salaries. The ability of unions to push up the salary structure as a whole faster and farther than would have been the case in the absence of unionization is probably exaggerated in the eyes of both the general public and of the members (actual and potential) of the unions themselves. In public institutions, unions have seemed to operate pretty much within the boundaries set by the increases granted to other public employees, these increases, of course, themselves usually being the result of union negotiations. The California experience suggests that, in the absence of academic unions, faculty might not have done as well, but this is not necessarily the typical case. On the average, faculty unionism probably stimulated the rise in salary ranges above what would have occurred in its absence, but the more important cost increases may well turn out to be found in the changes in salary administration. The movements toward parity in pay, security of employment, and promotion practices have cost implications that often are very substantial. There seems to be little question but that unionization will prove to be a major influence in permitting substantial numbers of nonfaculty academic employees and of "irregular" faculty to win major gains in compensation and other benefits. These changes may be regarded by the reader merely as the achievement of justice delayed, but in any event, they amount to major cost increases that might have had a lower priority in the eyes of administrators not faced with organized pressures.

2) Increases in bureaucratization. There is a legal witticism to the effect that "every man is entitled to his delay in court." Confronted with a potential challenge to every personnel action or to every decision with implications for working conditions, university management must become

more formal, more systematic, and more explicit. It is not enough to devote the time and effort to see that justice is done; the administrator must also be able to prove that it was done. One can expect offices of industrial relations to be created and staffed, legal counsel to be retained, court hearing and arbitration cases to be prepared, training programs to be instituted, and policy manuals and personnel reports to be multiplied. What appears to an administrator to be the flexible and judicious application of informed judgment may appear to other eyes to be a capricious and possibly malicious exercise of arbitrary authority. Decisions will take longer to make, and their implementation will be subject to challenge after the fact.

3) The demise of the scholar-administrator. Traditionally, most of the academic functions of colleges and universities have been "managed" by persons drawn from the academic staff, often working on a part-time or temporary basis. They shared the attitudes and values of the faculty and the other professionals and in most cases expected to return to their professional activity at a later time. This sort of amateur administrator will almost certainly become relatively rare on the campuses. Faculty will still move into administration in substantial numbers, but those who do will be making a new career commitment and are more likely to hold views and to adopt managerial styles that are appropriate to their new roles. Increasingly, the administrator of the future will be drawn from outside the faculty group. In part this will reflect a voluntary withdrawal by academics who will find the bureaucratic, adversary relationships required in the new system unattractive. In larger measure, however, it will reflect the desire of campus chief executives to have a staff who have both the ability and the commitment to function as managers in the new environment. During a conversation with a president, one of those present asked how a faculty member recently appointed as his assistant was working out. "He's trying to decide whether he wants to be management or labor," was the cryptic reply. The need to make that kind of a choice is going to be more frequent in the future than it has been in the past. In many unionized institutions, at least academic administration from the level of deans upward, and probably down to the level of department chairman, will call for a different kind of commitment than it has in the past. Perhaps only those with a feeling of nostalgia for a romanticized past, will feel a sense of loss if this occurs,

but a professional activity is best performed under conditions of autonomy, self-discipline, an acceptance of mutual obligations that is hard to duplicate under a regime characterized by formal relations, the enforcement of explicit standards and procedures and delineated lines of authority.

A corollary of the proposition that a more clear cut division of roles will develop is the probability that a unionized faculty's influence in the appointment of administrators will be questioned in a bargaining situation. In addition, the concept of faculty representation on the governing boards will be clouded as will the status of students where they are involved in some governance functions. Interestingly enough, there appears to be more concern about the consequences of the effect of unionization on governing board membership among administrators than among faculty, although this may reflect the fact that the vocal faculty in unionized institutions are likely to be those who have the least confidence in the shared authority mechanisms. Unions might have few objections to having a foot in both camps, but if faced with the necessity for choice, there is little doubt that they prefer the leverage provided by a bargaining relationship to the more subtle possibilities of internal influence.

A Summing Up

As the faculty union movement spreads, the variety in forms and experience will continue to increase, at least in the short run. It is important that the experience of the organized institutions be analyzed and reported on by persons familiar with the local situation. The research that has been done to date suffers from a lack of detailed knowledge of how the new collective bargaining arrangements are working in practice. Much of the material published to date has necessarily been based on fragmentary information and has had a high proportion of speculative comment. Perhaps the worst fault of the available material is that the unionized situations have been compared with idealized versions of how institutions of higher education have functioned in the past. The impact of unionism on higher education has to be assessed in the context of the past practices in the actual institutions that have adopted the new collective bargaining pattern. The next phase of evaluation should focus on more intensive analysis of specific situations. When this has been done, it will be time to move again to the state of overall synthesis.

FOOTNOTES

[1]As far as I can determine, it appears that the Milwaukee Technical Institute (AFT) was the first two-year post secondary school to be organized in 1963, and that occurred as part of a K-14 campaign. If we distinguish between vocational and technical schools and the more comprehensive community colleges, the first of the latter to organize appears to have been Michigan's Jackson Community College (NEA) and Henry Ford Community College (AFT) in 1965. The first four-year college in which a union won formal bargaining rights was the U.S. Merchant Marine Academy (AFT) in 1967. As noted in the text, however, the CUNY elections marked the real beginnings of the movement. For the sake of the record, it would be very helpful if anyone with other information relevant to the chronology suggested herein would contact the author.

[2]See the Chronicle of Higher Education, VII, No. 2, October 2, 1972, p. 1.

[3]In states in which bargaining might be carried on without the benefit of an applicable law, conflicts between a union and a senate over jurisdiction would be settled by extra-legal means. The reader can make his own estimate of the outcome.

COLLECTIVE BARGAINING IN HIGHER EDUCATION:

ITS IMPACT ON CAMPUS LIFE AND FACULTY GOVERNANCE

Donald E. Walters
Deputy Director
Massachusetts State College System

The unionization of college faculties in recent years has dramatically escalated the sense of uncertainty about the future of American higher education, and this has symptomatically increased the level of anxiety among college administrators. No one really knows what unionism will do to the college campus by 1980, nor what the impact of collective bargaining will be on such cherished values of the academy as collegiality, faculty professionalism, and institutional autonomy. Will a national movement of faculty toward "collectivism" tend to create a plastic professoriate where uniformity leads inevitably to mediocrity? If so, the price of unionism would be a serious loss of self-commitment, self-motivation, and intellectual freedom which reflect the high standards and goals of today's academic profession. The mounting concern is not, therefore, without foundation. But neither is it without remedy.

There are two major current assumptions about the impact of collective bargaining on institutional life, campus life-styles, and academic traditions. They both reflect the same concern about an uncertain future marked by growing faculty unionization, but they approach that concern from different directions.

The first assumption is this: By broadening the scope of negotiations at the bargaining table to include faculty governance, the control over campus decision making will shift from the faculty (or the faculty senate) to the union. This will create an adversary form of government, tend to polarize the faculty, students, and administrators, and destroy collegiality as a viable system of relationships on the college campus.

The second assumption is very nearly opposite: The highest standards of faculty professionalism and the system of collegiality in American higher education will be preserved intact only if union and campus representatives can find creative ways to include faculty governance in collective bargaining without allowing the system of decision making to become the exclusive property of either the union or the institution.

Most colleges and universities, both two year and four year, public and private, who are at the bargaining table today have adopted in some essential form, the first assumption. It has become for them the basis for deciding both the scope and the strategy of negotiations. Thus it is understandable that these institutions should make every effort to narrow the definition of "conditions of employment;" this would effectively exclude from the collective bargaining contract any substantial provision dealing with the rights of faculty to participate in campus decision making. The argument is made that such rights should be exercised within the traditional campus governance structure by means of the faculty organization existing for that purpose outside of and apart from the collective bargaining agreement. The hope is that the union and the senate will thereby peacefully co-exist, each satisfied with its assigned role, and each respecting the borders and jurisdiction of the other.

Such a dualistic arrangement for allocating responsibility over faculty business is no doubt ideal. Indeed, so long as it will work for any given campus, it is a perfectly plausible solution. It does not seem to me, however, that it is likely to work for very long for at least two reasons:

First, because of the reasonable doubt that any campus can expect harmony to exist for long between two vigorous

organizations -- one a senate, the other a certified bargaining agent -- both purporting to represent the self-same interests of the self-same faculty. At some point -- almost certainly at the time of a major grievance -- the senate and the union will inevitably square off with each other on the issue of which organization really represents the interests of faculty to the Trustees and the administration.

The second reason is related to the first: The definition of "conditions of employment" in statutory language has not yet seen its final legal test. Future judicial constructions as well as statutory amendments may well attempt to expand the definition of "condition of employment" especially for college faculty, to include "governance" -- that is, to include as matters for negotiation the rights of faculty to participate in the processes of decision making. On those campuses therefore which have or will have both a unionized faculty and an active faculty senate, it will become increasingly difficult for the administration to grant recognition to and deal effectively with a faculty senate concerning decisions which affect not only the pay, promotion, tenure and workload of faculty but which affect admissions, curriculum and long range planning as well.

I therefore find myself persuaded that the second assumption constitutes a more promising starting point for harmonizing the values and traditions of the campus with those of the union. One cannot dodge the issue of governance in collective bargaining; the true challenge for higher education is to find new and positive ways to tailor the collective bargaining experience to fit the special needs of colleges and universities -- needs which are demonstrably different from other already unionized sectors whether firemen, or policemen, or elementary-secondary school teachers. Hence it is quite possible that within this decade the process of both collective bargaining and the contract itself will become a major new medium for integrating traditional academic and collegial values with the felt needs of unionized faculties. If faculties are to prevent their reclassification as mere employees, if faculty professionalism and independence is to be preserved where it exists and sought after where it does not, if institutional autonomy is not to be eroded, and if college communities -- faculty, students, and administrators alike -- are to emerge from the experience of unionization and

collective bargaining as colleagues and not as adversaries, then campus governance must become a matter of collective bargaining; for properly negotiated it becomes a potent force for integration on campus.

Nevertheless, the negotiation of an entire system of campus governance into a collective bargaining agreement is not without risks. It needs to be undertaken with extreme care, and requires ultimate agreement between the parties on certain basic principles. The recent experience of the State Colleges in Massachusetts suggests, however, that such risks can be minimized provided both sides agree that the governance machinery so negotiated is not the property or exclusive business of either the union or the administration, but conceptually belongs to the institution -- to the broader community consisting of faculty, students, and administrators.

The Massachusetts State College experience should provide them needed evidence that both the collective bargaining process and the collective bargaining contract are flexible and not fixed forms; the college and the union must both be willing to put aside the old precedents from elementary-secondary and other experiences, at least long enough to explore new forms that may fit the needs of higher education more perfectly.

In Massachusetts, faculty unionization occurred relatively early among institutions in the Northeast region of the United States. The Southeastern Massachusetts University faculty negotiated a contract in June, 1970, only nine months after the first faculty contract at any four year institution in the country was signed at the City University of New York. Among the six New England States, Massachusetts was the first to face the prospect of collective bargaining at the collegiate level. Indeed, until recently when the three public post-secondary institutions in Rhode Island were organized -- the University by the AAUP, the College by the AFT, and Junior College by the NEA -- Massachusetts was the only New England State of the six involved in collegiate collective bargaining at all.

There are fourteen public four year colleges and universities in Massachusetts. The University of Massachusetts, Southeastern Massachusetts University, Lowell Technological

Institute, and the eleven State Colleges are under the jurisdiction of a single lay governing board. The first of these eleven four year institutions to be organized was Boston State College when its faculty elected the AFT as its exclusive bargaining agent in November, 1969. Since then four more of the State Colleges have elected the AFT, and three more have elected the Massachusetts Teachers Association, an affiliate of the NEA, to represent them at the collective bargaining table.

On April 3, 1972, the first collective bargaining agreement with the Faculty Federation at Boston State College was signed, and on September 23, 1972, the second was signed with the Faculty Federation at Worcester State College.

Shortly after negotiations began in 1969, the Massachusetts State College Board of Trustees and its representatives opened the way for negotiating contractual provisions affecting campus governance. The Board proposed to the union and its faculty representatives at the bargaining table that ways be sought in the contract to secure for all faculty -- as well as students -- the status of collegial partnership with administrators in the affairs of their institution. This proposal was based, however, on five key conditions which over time the parties at the bargaining table were able to accept:

First, that the process and machinery for goverance was to exist independent of the union local on campus, and outside its exclusive dominion or control. In short, the campus governance machinery was in no way to be considered a creature of the union local qua union local as, for example, the union's own Executive Board and Committees would be.

Second, that each and every member of the unit represented by the union (which included all faculty at the ranks of instructor, assistant professor, associate professor, full professor, all librarians and all department chairmen) would be entitled to participate in the negotiated system of campus governance (that is vote in elections, and sit on committees) whether he was a dues paying member of the local or not.

The establishment of these first two principles insured that control over the governance processes themselves would not be shifted from the general faculty, or from the community as a whole, to the union qua union.

The third principle established by agreement between the parties was that the system of campus governance negotiated in the contract would be advisory in form and in effect. It was understood that the authority to make final decisions was by law vested in the Board of Trustees, and, by delegation, the President of the College; the contract expressly reinforced this principle.

The fourth principle established that the form of the governance structure would be tripartite and would equally include faculty, students, and administrators in the contratual process of decision making.

The fifth principle established an exception to the fourth by recognizing the special and dominant interest of faculty in (a) matters affecting their evaluation for reappointment, promotion, and tenure, (b) matters affecting their workload, and (c) in the grievance procedures established by the contract. These three areas, and the decision making processes assigned to them in the contract, were set forth in the agreement in separate articles; thus a dominant role was assigned to faculty over matters of special faculty interest.

Consequently, the collective bargaining agreement between the Board of Trustees and the Faculty Federation both at Boston State College and at Worcester State College creates by contract what is essentially a constitutional form of tripartite campus governance. These contracts are, as a result, process oriented, not provision oriented, and they are open-ended enough to permit faculty, students, and administrators to continue to make important educational decisions on an ad hoc basis as new needs and opportunities arise at the institution during the two year term of the agreement.

In the Worcester State College agreement this commitment to freedom of decision making finds expression in a governance structure which consist of the following elements:

An All-College Council comprising 18 members: six faculty, six students, and six administrators. The contract provides that two of the six faculty seats are to be held by the President and Vice President of the Faculty Federation respectively; and the other four are to be held by faculty members elected at large (regardless of their dues paying status in the union) from each academic rank from instructor to full professor, respectively. Two of the six student seats are to be held by the President and Vice President of the Student Government Association, respectively; the other four are to be students elected at large from each class from freshman to senior, respectively. The six administrators are appointed by and serve at the discretion of the President of the College.

The authority of the All-College Council is general. The contract emphasizes the Council's authority to play an innovative role in educational leadership; it is expected to make recommendations to the President on any matters affecting the needs and interests of the institution.

Four Standing Committees of the All-College Council dealing respectively with (1) Undergraduate Curriculum, (2) Graduate Education, (3) Admissions, and (4) College Development (which incorporates responsibility for the areas of student life, consultation on the college budget, and the development of the college calendar). The faculty and student membership on each of these four Committees is numerically equal, and all such representatives are elected from their constituency in campus wide elections. The contract directs each Committee to undertake study and research, and to make appropriate recommendations directly to the All-College Council for final review by the President of the College.

In addition, the contract at Worcester State College sets out in separate articles provisions for (1) the annual evaluation of faculty, (2) the adjudication of faculty grievances, and (3) the assignment of faculty workload. The contract requires the involvement of students in the area of faculty evaluation, but limits the focus of student evaluation to the teaching performance of faculty. Great effort was made, as well, to develop, by contract, provisions which guarantee to faculty the highest standards of due process in such key areas as evaluation and grievances.

The analysis is not complete, however, without suggesting how it is that the elaborate process-oriented governance structure negotiated into the Worcester and Boston State Colleges contracts tends in any way to stabilize the campus, preserve collegiality, insure institutional autonomy, or affirm the rights and responsibilities of faculty members qua professionals.

First, it tends to stabilize the campus by expressly consolidating the common interests of the union and the faculty senate in representing the faculty. The mechanism for consolidation is governance. By contract, a single set of integrating governance procedures are established through and by which the interests of all faculty may be addressed and satisfied. The potential conflict of interest between senate and union is thereby dissolved, and with it the potential for open warfare. The contractual commitment to tripartite equality among faculty, students, and administrators on campus governance also tends to secure a measure of campus stability. The contract refuses to isolate the governance machinery from any of these three principal constituencies. Rather it moves the campus community as a whole toward unity, by implicitly removing the divisiveness that can lead to a polarization of the entire institution.

Second, it tends to preserve collegiality by refusing to give any cognizance in the contract to the kind of adversary relationship which has been an essential quality of collective bargaining historically. Rather, the negotiated governance processes in the contract explicitly recognize that the essential goals and interests of faculty and administration are common goals and interests, not disparate, and that the accomplishments of those goals and the satisfaction of those interests is enhanced if faculty and administrators pull their "oars" in the same direction.

Third, it tends to insure institutional autonomy by allowing decisions affecting the college's future to be made on the merits and at the time during the contract period when such decisions may be required. The contract makes no commitment in advance that would in any way prevent faculty, students, and administrators from dealing effectively with an unanticipated institutional need or opportunity at the time it occurs.

Fourth, it tends to affirm the professional status of faculty by refusing to reduce their relationship to the institution to that of mere employees. Faculty are, of course, employees, but their role and contribution to their institution, to their students and to their own scholarship carry them far beyond the limiting concept of employee. All provisions of the contract dealing with faculty roles -- their rights as well as their responsibilities -- begin implicitly or explicitly with the assumption that no outer limits have been placed on the commitment or the contribution of faculty to the college; no provision of the contract in any way seeks to quantify the work or the workload of faculty. On the contrary, the contractual expectation is that faculty shall be largely self-initiating and self-sustaining in their teaching, their scholarship, and their service on and off the campus. Faculty, unlike most other employees, come to their profession as owners of the "tools of production." Both the Worcester and Boston State contract take this unique fact into account in accepting and clarifying the role of faculty as professional.

What the future will hold for higher education if unionization of faculty and other professionals continues to grow is still a matter of speculation. As more experience is gained, however, with contracts like those in Massachusetts at Boston and Worcester State Colleges, some of the grim uncertainty about tomorrow may be diminished.

The challenge for American higher education today is to effectively control the powerful forces for institutional change generated at the bargaining table.

FACULTY BARGAINING AND TRADITIONAL GOVERNANCE PROCESSES AT CENTRAL MICHIGAN UNIVERSITY

Joyce H. Pillote
Professor of Philosophy
Former President and member of
bargaining team Central Michigan
University Faculty Association

I

I have been asked to speak to you today about the experiences we have had at Central Michigan University with a dual system of university governance, i.e., the Academic Senate and the Faculty Association, which is our collective bargaining agent. My purpose here is to try to rid you of any fears you might have about collective bargaining and its appropriateness on university campuses. I am not very confident that I can do so, but I certainly hope that I do not create any new fears.

Collective bargaining, whether on university campuses, or elsewhere, is a relatively conservative phenomenon, in the sense that it is a well-established institution in American society. It certainly does not present a very radical solution for resolving the problems that are presently occurring on our campuses. There are many of us who wish that it were a more radical phenomenon, so that it might be more effective in initiating a much needed change in our university system.

A good deal of what I will say must necessarily be from my own perceptions of the situation, as I'm sure we are all aware that one's perception of a situation is influenced considerably by one's position in that situation. So perhaps I had best indicate where I am in the university situation, so as to give you the perspective from which I'm speaking.

I speak primarily from the perspective of a full-time faculty member. I feel sure that those who are full-time administrators will have different perceptions of the situation, as will some of my colleagues, who even though faculty members, do not share my views.

There is a belief shared by many people that if we could only see each other's point of view, if we all had the same information, we could reason together and reach agreement. As hopeful as that belief is, I must reject it, for it ignores an important element in decision making -- one's goals. To the extent that we have different goals, different ideals that we strive for, to that extent our reasoning together from a common starting point will not guarantee us any agreement. To the extent that the faculty and the administration, not to mention the students, have different goals, they are engaged in a political struggle, no matter how distasteful that description may be to some of us. They are engaged in a struggle for the power to determine, or at least to participate in determining, the course of events in their lives at the university.

Collective bargaining is only one tool, and a conservative one at that, that has been introduced into this power struggle.

II

I won't take the time to go into the history of how it is that collective bargaining came to such an unlikely place as CMU. We're a state university, situated in a relatively conservative, midwestern, small town, staffed by a relatively conservative, midwestern, small town faculty. Not a likely profile for the first four year institution in the Midwest to unionize. However, I think that story is best saved for a different time, a different place, and a different audience.

For reasons that may become clear as I talk, when the faculty at CMU voted to go the route of collective bargaining, it also decided to keep the Academic Senate. This was done in part because of the tradition of senate systems of governance on university campuses in general, and at CMU in particular. When most of us think of university governance, we immediately think of the Board of Trustees, the Administration, in the person of the president, and the Faculty, as represented by a senate. To have suggested abandoning the Academic Senate would therefore have been politically unwise. It would have been too strongly against academic tradition.

In our own particular situation, many of the most refreshing changes that had occurred at the University had been in the forms of policies that had recently been passed by the Senate, and approved by the Board. It was feared that if the Senate were dissolved these policies would be, if not void, then at least rescinded by the Board, which was at this time publicly on record as being opposed to collective bargaining. In fact, it was prophesied by one member of the Board in a public talk to the faculty that if collective bargaining came to CMU so would time clocks in every room!

Another reason for maintaining the senate structure was the uncertainty among a large number of the faculty, including many of those who supported collective bargaining, as to how the mainly academic decisions could be handled in a contractual way so as to ensure academic integrity, quality, and autonomy.

Now that we have lived with this dual system of governance I think we are in a better position to evaluate its merits. As in most situations, there are both advantages and disadvantages, and it is the function of practical wisdom to determine wherein the balance lies.

The advantages for us in maintaining the senate system have been fairly straightforward. It has allowed us to keep many of the policies that had so long been fought for and finally attained. It allowed us to negotiate our first contract, focusing on areas that were problematic and leaving aside those areas that were already covered by policies that most people seemed content to live with. As a result of this, much emphasis was made on negotiating salaries and

related matters, including removing the salary inequities from the past. Since CMU at the time was one of the lowest paid universities in the state of Michigan, salary was an area of great concern to the faculty.

Maintaining the senate structure also allowed the continuance of an on-going arena for deliberation on academic matters, and therefore much of the important discussion on these matters was enabled to continue while negotiations were going on. As much of the university's daily business is conducted by committees, most of which are established at CMU by the Academic Senate, this provided a sense of continuity and prevented the kind of "limbo" feeling that has resulted on some campuses where the former system of university governance was dissolved when collective bargaining was instituted.

However, there are also disadvantages. Most important, maintaining the Academic Senate led to a false sense of security with regard to the previously established policies. We became aware that the enjoyment of many of the benefits of our hard-won battles were at the pleasure of the Board of Trustees. It is the Board's, and the Administration's, view that they have the authority to unilaterally rescind these policies. In the last year, for example, we have seen policies regarding tenure, departmental evaluation of chairmen, and faculty participation in the selection of administrators all recalled for "reexamination." If these areas had been covered in a contract, it is my understanding that they would have been "reexamined" only during the negotiation of a new contract, or if both the faculty and the administration so agreed.

One of the assumptions that our dual system operates on is that since there is a conceptual difference between academic and economic matters, they should be handled differently. This division between academic and economic matters, one to go to the senate and the other to a union, is at best a naive and artificial one. How can one make an enlightened decision about such things as teaching loads, class size, approving a new stadium, increasing scholarships for students, new programs, institutes, departments, or degrees without also making an economic decision? To the extent that these areas affect or are affected by budgetary considerations, they cannot be separated from the economic areas. To pretend otherwise is to insult one's intellectual integrity.

Again, to the extent that the Senate is given jurisdiction over such "academic" matters as the above, the union is prevented from getting the support it needs to negotiate on these matters. (I almost said that this prevents the Union from negotiating these items, but it is my belief that anything can be negotiated; it is more a matter of getting your constituency to support your negotiating these items.)

These last points that I have been making have been against the dual system of governance. I would like to mention now an objection I have against the senate system itself, at least as I am familiar with it. It lends itself to co-optation by the administration. For example, there is too much compartmentalization of decision-making. The administration decides if departments or programs are to be created or abolished; the Senate only approves or disapproves the curricula for these departments or programs. You may not think this is an important distinction, but anyone who takes the time to consider should realize that it is one thing to decide to create a department of phrenology, and quite another to decide what curriculum should be approved for that department. Oftentimes, one is in the uncomfortable position of approving a curriculum for a department that one doesn't believe should even be on a university campus. Once the decision to create the department is made, however, the faculty is simply asked to rule on the appropriateness of the curriculum for that department.

Decisions are required of the Senate where they have not been given sufficient information by the administration, especially where this involves financial matters. To be asked to decide on the initiation of a new PhD program without also being told how this will be funded or how it will affect the other units in the University, is to be asked to decide in a vacuum.

With a collective bargaining system, however, especially with the "right-to-know" laws, the faculty can demand access to all the information that is needed for them to make their decisions. In addition to this, the administration is not viewed as a neutral intermediary between the faculty and the Board of Trustees, as it is so often in a senate system.

III

In contrast to my belief that collective bargaining in higher education is a relatively conservative phenomenon, there are some objections that are raised often enough to merit attention here. One that was raised on our campus was what collective bargaining would do to the deliberative process that is so very essential in making wise academic decisions. I do not see this as a serious objection. I do not see how collective bargaining is antithetical to making deliberative decisions. After all, not every decision needs to be incorporated into a contract. Not everything need be negotiated. You can still maintain your committee system. In fact, the committee structure can be essentially the same as it was with the senate system. You can have committees set up with representatives from the administration and the union, and if they reach agreement on a proposal, fine. If it is a very important issue, it can go to the faculty and the Board for their respective approvals. This is even more representative of the faculty's wishes than letting a senate make the decision. In matters that are less essential, the proposal may only have to get the approval of the executive board of the union and the administration. Most committees are working committees, gathering information and presenting proposals. This can continue. Of course, the union can have its own committees, as the administration obviously has its own committees, although they are usually called by other names.

On matters where the faculty and the administration are miles apart and no agreement is likely to result from all the meetings one can possibly set up, negotiations would perhaps be the inevitable result. But there need be no problem here. I've been a member of our Senate for four years and have seen deliberation as it occurs there, and I've been a member of two rounds of negotiations and have seen deliberation there. I am not at all convinced that the quality of deliberation is any better in the Senate than it is in negotiations. Deliberation can occur anywhere. It can occur on the floor of the Senate, it can occur in a committee meeting, it can occur in negotiations, or it can occur around a table over coffee, where most of the political discussions on campus seem to take place. I don't see how the initiation of collective bargaining is going to hamper the deliberative process.

Another fear that people have is that collective bargaining will result in items being negotiated into a contract that are best handled outside of a contractual situation. This I find somewhat naive. One of the things that I'm so firmly convinced of is that if all of the people, all of the academics, who are so very concerned about collective bargaining changing the very quality of academic decisions were to get involved in unions, were to get involved in the decision-making that is going on, they could prevent anything from being negotiated into a contract that they did not want, they could prevent any change in the university governance structure that they did not want. But these people tend to be so concerned about their professional status as academics, not as workers, assuming that these are mutually exclusive categories, that they don't join the union. They don't participate in collective bargaining decisions and therefore leave it open to people who have other views as to what should be negotiated and what a university should be like.

People are also concerned that if collective bargaining takes hold on university campuses peer evaluations will be eliminated. I am convinced that a faculty and an administration that <u>really</u> wants peer evaluation can incorporate it into a union system. Of course, if by "peer" evaluation one means evaluation by provosts, deans, chairpersons, or senior professors, I would hope that a union would be wise enough to prevent that. There is no reason why collective bargaining in universities must parallel bargaining in trade unions or in the public school system. It is up to the faculty and the administration to see that the model of bargaining they accept and engage in is one that applies to the special situations that exist on campuses in general and on their own campus in particular.

It seems strange to me to realize that there are faculty members who are concerned about a union making decisions that are going to affect their working conditions and their everyday lives on campus. I thought we were all aware that there are decisions made everyday that affect our lives. Often we know who is making the decision, but sometimes not. However, we are always sooner or later aware that they have been made. Why is it that these people are content to have the dean tell them that they are going to lose two positions from their department next year, or the chairperson tell them that they must teach this course rather than that, or teach 12 hours

rather than 9, or the Board of Trustees tell them that the tenure laws are being changed, and yet these same people are disturbed at having a union negotiate these items for them? It seems to me that they have a much greater opportunity for participation in decisions as they apply to their lives on campus by participating in the union. Members of the union can determine what goes into a contract, what stays out of a contract, or whether a contract will be negotiated at all. It seems to me that if democracy, participatory democracy, is desirable, then collective bargaining certainly assures that.

I venture to say that those in the audience who do not approve of democratic governance on university campuses, either because it goes too far or because it does not go far enough, will not find the arguments I have given very persuasive. But most of the people that I speak to at least hold the political principle that people should be governed by rules that they at least have had some say in establishing. To those who hold that political persuasion, I should think collective bargaining would present no problem.

IV

I would like to turn now to some problems with collective bargaining that seem to me worthwhile worrying about. I think that these problems can be resolved, although I am not familiar with any such resolutions nor with many attempts to to so.

The most telling criticism of collective bargaining, as I see it, is that it is a two party process, involving the faculty and the administration. Those of us who believe that there is a third party essential to the functioning of the university, namely the students, are bothered by the absence of students from the collective bargaining process. I am fully aware of the terrible visions that this suggestion raises in the minds of both faculty and administrators, and I certainly have no easy suggestion as to how students should function in this process. Some students have already been experimenting with a student union concept of student government, and there have been some hints, as in Lieberman's article in HARPER'S. However, I have not seen any specific pro-

posal as to how students could participate in a collective bargaining process, and I am not at all sure what the legal problems would be.

I assume we're all aware that students are still, contrary to the impressions being created by the mass media, very concerned about having a say in those areas of their lives that are being affected by the university, and I think we are fast approaching the time when we will all be called upon to create new ways of university governance that will serve the needs of at least the major elements of the university community. Whether these ways will follow the traditional models of collective bargaining, I do not know.

Another problem that I see is that to the extent that the administration brings in outside staff -- lawyers, professional negotiators, etc. -- the faculty will eventually, if not initially, recognize the need for some professional negotiating staff, whether it be in the form of legal advisors, a professional negotiator, or a team of negotiators. The difficulty with this is that people who have not been a part of the university scene often do not have either the necessary perspective or an awareness of the history of the particular institution. This can lead to a loss of autonomy for the university. However, I believe this can easily be resolved.

One way that we handled it at the negotiations at which I was present was to bring in a professional negotiator to advise us. He did not tell us what our goals should be. We decided what it was we wanted to accomplish, where the problems were, he simply helped us in terms of informing us of the relevant laws and helping us develop strategies.

Many people regret that outside people have to be brought in whether on the part of the faculty or the administration. Whether that's regretful or not, I don't know. It seems to me to be inevitable. I think a faculty is naive if it thinks that it can negotiate with only its faculty resources, who are not themselves professional negotiators. Of course, if you are in a large university situation where you have a department of labor relations, or a law school, you might have people on your staff who would have the professional expertise to help in negotiations. But in universities and colleges where there are not these professional

people readily available, I think it is inevitable that the faculty will go off campus to get the professional help it needs.

It then becomes encumbent on both the administration and the faculty, if they are sincere in not wanting to lessen the academic autonomy of their institution, to see that the outside resource people are informed as to the nature of the university situation, the uniqueness of it, and also well informed as to what their respective parties want.

In conclusion, let me remind you that the university is changing. The needs of the people it serves and the demands of those who constitute its very nature are changing. It is doubtful that the introduction of collective bargaining is either necessary or sufficient in itself to meet these changes. Some, however, think that it is inevitable. Let us hope that there are those in the university community who see the challenge being presented to the university from both within and without and who do not fear trying new methods to serve the needs of the people both inside and outside of our universities.

DISCUSSION -- MORNING SESSION *

Joe Garbarino. In response to Mr. Walter's statement trying to minimize adversary relationships, I think the existence of conflict is a fact. I don't think there is any structure that will eliminate it. The structure developed at Worcester State College is as susceptible to conflict as any other. As far as Dr. Pillote is concerned, I got the impression that she really is posing a very important question in terms of whether or not faculty unions are a way of representing the interests of a particular occupational group. In other words, are they an occupational association or are they a vehicle through which change can be instituted by a combination of faculties? The problem with her argument is that if the union is doing something you don't like you get activated and change it. I think that a large number of faculty really trust the administration more than they trust the visible leaders of the unions that they see in action. They resent the idea that they've got to be politically active to prevent the union from, in effect, making decisions about their status that they aren't very happy about.

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* The comments have been edited for clarity of presentation, but not for substance.

Don Walters. The supplementary remark that I would like to make is, that whatever else happens, what's at stake in terms of the movement towards unionism on some campuses may be reflected ultimately in terms of tone. Tone seems to relate very keenly on our campuses to the kinds of relationships that underlie the work-a-day world in the academy. I just hope that we can transcend long enough the details of our concerns about unionization to take some assessment of what our goals are, and what our attitudes are towards what we want at our institution with respect to our fundamental relations. I'm talking about faculty, students, and administrators obviously. Tone, it seems to me, is a very important aspect for institutions like American colleges and universities who have grown up with and, indeed, pride themselves on such notions as community. Indeed, tone is often, to mix a metaphor, the oil that makes the wheels of progress go on our campuses in terms of being able to remain fairly creative, independent, and relatively autonomous. So I think that what's at stake here in terms of the impact of unionization is what it does to our relationships on campus.

Joyce Pillote. Just one response to Joe's comment. I agree, the faculty seems to identify and trust the administration more than it does its own faculty members. But they need consciousness raising.

Steve Einner (University of Delaware). I have some comments that may give a more pro-faculty point of view. I think what Joe Garbarino points out is that many of the possible implications of collective bargaining are absolutely true, particularly the increasing bureaucratization. We have a new vice-president of labor relations at the University of Delaware who primarily has an industrial background, and who thinks that collegiality means politeness. I suggest that one of the thrusts that has brought about collective bargaining at institutions such as the University of Delaware, Central Michigan, Oakland, and the University of Rhode Island, is distrust. That's the overriding tone that brings about the collective bargaining process. One reason why collective bargaining or unionization comes about is because we have faculty members perceiving that they are professionals in an atmosphere that they perceive has already become bureaucratic. Now whether or not this is true from objective reality, I don't think matters. I think the important point here is that the perception of faculty members as to what

kind of mode they're operating in is the overriding determining factor that brings about collective bargaining.

Dave Newton. I would like to take a moment to constructively comment on Don Walters' position. I have a great deal of admiration for Don. I only have a quarrel with respect to history. I feel that Don Walters' system worked well in the past and I think it will work well in the future. I just have some qualms about the present. It is one thing to take the Massachusetts system out of the medieval age of governance and bring it into the Renaissance. I think it is another thing for Massachusetts to face the economic and political reality when the union raises issues of wages and salary in addition to governance.

I think that 25 years from now, when collective bargaining has a history in higher education, and when the unions have won some of their original hard core battles, unions will become professionally responsible. But in the here and now, as you well know, the union is a political, economic organization. By its very nature it is not given to intellectual exercise or rational discourse. It approaches issues in terms of pressure and power tactics and I wish the faculty and Professor Pillote more success in using this. But I think our experience indicates that unions must by their very nature struggle for status, prestige, and power.

Don Walters. I have no essential argument with one thing that Dave has put forward. What we've done in Massachusetts certainly may not represent a usable mode for everybody else, maybe not even anybody else. I didn't mean to give any impression that I thought it did. What I do think, however, as each of us responds in local settings to different kinds of circumstances and different kinds of pressures, that one has to take the attitude with respect to unionization of simply not letting the phenomenon assimilate the institution. One has to be responsive and hopefully creative. I hope that what we're doing in Massachusetts may provide some insights, even if it cannot be taken as a universal guide to how relationships can be forged out of new metal in a contract.

I agree with your view, coming scarred and bloodied as you must these days from the bargaining table, of the economic and political forces of unionization. I also see the movement in terms of a struggle for power as well as economic

gain. I think that the question of the union's interest qua union in assuming control over the place where the heart beats on our campus, namely where the decisions are made, is going to emerge on many campuses very soon, in one form or another. Unions are going to be seeking control over decision-making. That's another reality and I think that it is important that an effort be made to show how it's not necessary that the struggle for power end in a blood bath. I'm more full of wishful thinking than confidence, but it seems to me that experiment is the name of the game and when you can minimize the risks, the experiments may be worth the stick.

Donald Warneke (Monmouth College). I think the issue of the duality between the Association or the union on the one hand and the senate on the other is quite interesting. At Monmouth we nominated to leadership positions the people we thought had good standing in the faculty and who were sympathetic to the Association. If there is going to be some kind of duality, then you at least have a fairly good grip on your senate and you can control your senate to the extent that they aren't going to undermine you. I think if a union allows a senate to politically have its own existence in the sense of undermining it, then I don't think it's doing its job as a union and it's not representing the faculty whom it is supposed to represent.

Emil Dillard (Adelphi University). At Adelphi, the AAUP has just been certified. We're now facing a problem of faculty definition under the NLRB. Should department chairmen, program directors of certain kinds and regular part-time faculty members be included in the same bargaining unit with full-time faculty members who have voting power in the senate and who can participate in university personnel committees and such matters. In the matter of relationships between the university senate and the collective bargaining unit, we feel there is a contradiction. Our chairmen are elected and serve a specified term. If chairmen are excluded from the bargaining unit, we feel eventually that the question of tenure for chairmen as well as their other roles in faculty senates and personnel committees will be raised. I would like Dr. Pillote to comment on these issues concerning the bargaining unit.

Joyce Pillote. I can't help you, but at least I can share some experiences with you. We included the department

chairman in our bargaining unit based on the rationale that they are elected or selected by the faculty and eventually approved by the administration. They are really faculty members, their hearts are with the faculty, but we're still not very sure where they belong. I should also add, they're not sure where they want to belong. They really feel as if they are marginal people. But they come to us when they want us to negotiate something for them in the contract because the administration wants something else. They are really in a stage of limbo and so are we about their being in the bargaining unit.

Joe Garbarino. Let me make one comment about the senate-union dichotomy. If you assume that the union does win an agency shop and everyone becomes a union member, or just assume that a union gets a 60, 70 or 80 percent voluntary membership, what's the theory on which you have two different organizations representing the same constituency?

Joe Orze (Southeastern Massachusetts University). I would like to get some response on the advantages and disadvantages of the agency shop. My colleagues on the other side of the table have been trying to get an agency shop at the university and I've been strongly opposed to it. They are very much in favor of it for they feel it would greatly enhance the status of the union on the campus, and I think maybe it would in a sense. But I am opposed to it, really not for the idea of enhancement or non-enhancement, but because I would rather see representation that is voluntary representation rather than mandated in terms of forced payment of dues. I would like to have some reaction to that.

Anthony John (Southeastern Massachusetts University). Just a brief remark to Mr. Newton concerning his view on Don Walter's position on governance. I would like to remind Mr. Newton that in the transition from the middle ages to the renaissance the composition of the university in those days was faculty and students, there were no administrators. Maybe the collective bargaining process is the modern manifestation of the faculty's desire to retrieve some roles that they played in the past. I would like to make one reference to the question of senates and unions in the same university. I was one of the founders of the faculty senate at SMU and its first chairman. We have tried to work with faculty senates to avoid the possibility of conflict in our concerns and in our roles.

I must say in all honesty that while I think administrators can be and in many instances are good people, they are very human. Being very human they will see that in one case where you have a legally constituted representative of a faculty group, that if they should go up to this group with a question concerning a faculty matter that by implication and indirection they are enhancing the status of this group and therefore making it more influential. The first th[illegible] they do, and this is almost universal, is go to the Faculty Senate which has no legal existence except by the grace and tolerance of the Board of Trustees. By gravitating towards the agency that is not the legal representative of the faculty, they introduced discord. I don't think that however hard we try to make both Senate and union work together, that this relationship can really last very long as an effective mechanism to represent the best interests of the faculty. Frankly, I agree with the three speakers today who said one of them must go.

With respect to the agency shop, the Faculty Federation at SMU, and I'm sure at other schools, has played some role in seeking not only professional benefits but also economic benefits for the faculty. All the faculty have come under the aegis of the favors that have been recognized and granted under the agreement. It seems to me that persons who got ei[illegible] or twelve hundred dollar raises because of an agreement negotiated by the faculty representative with the administration and who choose not to defray the cost involved ought to at least give something to the operating cost of such an organization. If they choose as a matter of conscience, not because they don't believe in unions, not to give to the union, they should at least contribute to some other organization. I think the idea of an agency shop is a sound idea and I hope one day it's implemented at Southeastern Massachusetts University and at every other institution.

Joe Fitzer (St. John's University). We have found that it is possible to work with a Senate and a third party union organization for several reasons. First, we in the union don't want to run the university and we're happy that there is a structure that will help run the university. On the other hand, there is the basic fact that the Senate can talk till doomsday and the Board of Trustees will say no. There's your collegiality for you. The union contract has a law

behind it so our experience has been that all union contracts which incorporate by reference the 1940 and 1966 AAUP statements on governance, serve to protect the professionalism of the scholar; the trustees have to deal with the union under the law. On the other hand, the Senate exists solely by the grace of the Board of Trustees. We have found that the only way we can keep the chairmen in the bargaining unit, if they want to be in the bargaining unit, is by taking away all their power so that our chairmen have no power to do anything. All they do is chair the meeting and do some of the paperwork. Our chairmen have no powers to do anything as chairmen.

Ken Smythe (Wayne State University). I think the gentleman from Massachusetts gave a traditional union argument for the agency shop; a guy should pay for the benefits he receives. I think you should classify an agency shop for what it really is. It's a matter of economics, that's all it really is. Do not get confused with the concept that you will get greater participation because you have a greater number of people paying money. In our experiences those people who traditionally participate, participate. Those who don't, they just pay it. Don't confuse the two philosophies.

George Horton (Rutgers University). I would like to make a comment about the Faculty Senate issue at Rutgers. One of our bargaining requests for this year is the establishment of a Faculty Senate. The reason for that is that the public for which you bargain is definitely limited. There is a whole host of issues that concern the faculty to which the faculty won't have an input, but can very effectively go through normal academic channels or the Faculty Senate. This in conjunction with the bargaining contract seems very advantageous.

Dick Laity. I would like to raise an issue which hasn't been touched on, but which I think must concern us all. At least we have a few people here with crystal balls, some of which may be a bit cloudy, but I'd like to look into the future and ask, as unionization becomes more prevalent throughout the country, do you foresee what the primary weapon for faculty clout will be? I think many faculty members support the idea of striking or job action. The question remains, what authority do we have, how do we win our rights at the bargaining table? I would like Mr. Garbarino to respond to that.

Joe Garbarino. I don't think the faculty power to strike is a very formidable weapon, even if it could be mobilized, and I'm not sure it can be mobilized. In states where you have laws for impasse procedures, the faculty's main power lies in their threat to use the impasse procedures. The other great weapon they have is harassment, and just being in existence is a pain in the neck. It's not hard to raise the level of pain without going on strike for it's embarrassing to administrators to get involved in open conflicts with their faculties. They will go to substantial lengths to avoid it.

Howard Parish (Jersey City State College). I think we have a basic problem as faculty in terms of the collective bargaining situation. One is, that in order to bargain collectively, we have to have equal power or strength at the table. We don't and it's about time faculties started to recognize that. There's a definite labor-management relationship that exists. We chose collective bargaining, we better recognize that it exists. It's inconsistent for us to be opposed to a right to strike if we want to maintain that strength and that power at the table. If we don't have it, we're not going to get anywhere in the bargaining relationship. Now we may never have to use it, but the fact is, we need to have some kind of clout at the table that we can use over administrations that choose to unilaterally make decisions, disregard contractual agreements, and say take them to court. We go to court, the courts don't rule in our favor, and we go in one big wild circle.

Until we can get some kind of power that puts us at least on an equal standing with management, that's what they are, we're never going to get anywhere in the collective bargaining relationship. They're going to sit, they'll meet and confer, and we'll put down nice little generalizations on paper which will be disregarded. The same situation exists in terms of grievance arbitration. Until we get binding arbitration as the final step in a grievance procedure, we go through it, we get rulings in our favor, they violated the grievance machinery, they violated the contractual agreement, but what happens? No restitution, no award comes out of it. We need to have some kind of clout. At the present time I can't think of anything better than the right to strike.

Alden Dunham. Joe, would you respond to that because I think you were saying, if I heard you correctly, that even if you got the faculty to agree to strike they wouldn't have much clout.

Joe Garbarino. Let me not respond to it but ask someone from Oakland to respond, since they are the only four-year college that has had a strike.

Carl Westman (Oakland University). We feel somewhat differently at Oakland. We feel that the strike was quite effective.

Stanley Kirschner (Wayne State University). Michigan has a very strong anti-strike law, yet strikes have been used to a degree of success. However, the courts in many instances have seen fit to allow the strike to continue, but the court would have to be convinced that the administration had been bargaining in bad faith. If the court was not convinced that bad faith on the part of management was going on then the court would issue an injunction to stop the strike.

Jerry Veldof (New Jersey Education Association). I think one parallel path that can be extremely effective in New Jersey is legislation. We have found in the past few years that having respectable legislation at the same time you have collective bargaining can be extremely helpful to those people who are concerned about the lack of equality in negotiations at the table. Last year, for example, the Association of New Jersey State College Faculties, of which Mr. Howard Parish is the President, requested from the New Jersey Education Association support for the Chancellor's tenure bill. The Chancellor had intended to by-pass other avenues and change the statutes governing tenure in New Jersey State and community colleges. As a result, the NJEA was able to effectively stop that movement so that this year the Chancellor is taking another direction by having the State Board of Higher Education pass a resolution on tenure which put the onus on the local boards and trustees with regards to freezing tenure. The resolution established formulas for determining the proportion of faculty who should be on tenure and provided for the evaluation of tenured people every five years in the state colleges and every year in the county colleges. Though the State Educa-

tion Association and Faculty Association have won in court over this particular issue, the NJEA has as a co-plaintiff entered this case. However, I think the legislative element found there can be extremely effective. We have been very successful in New Jersey with this over the past number of years.

GRIEVANCE PROCEDURES UNDER COLLECTIVE BARGAINING IN HIGHER EDUCATION *

Jack Chernick, Chairman
Research Section
Institute of Management and
Labor Relations
Rutgers University

Collective bargaining involves two closely interrelated processes: periodic negotiations which culminate in a written agreement; and contract administration which denotes the day-to-day application of the terms of the agreement. Typically the contract provides the rules and procedures according to which disputes over application of the terms of contract will be resolved. Collective bargaining agreements in the public sector when established under State Laws frequently must include written provisions for grievance machinery. Thus New Jersey law provides: "Public employers shall negotiate written policies setting forth grievance procedures which may provide for binding arbitration." Agreements reached through bargaining in four-year colleges and in universities are no exception. In thirteen agreements we have recently examined, all spell out the procedures for appeal of actions which bargaining unit members deem to have violated their rights.

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The purpose of these remarks is to speculate with respect to the operation of grievance handling systems in organizations of higher education when account is taken of the collective bargaining and environmental conditions under which they arise. I shall attempt to raise some questions that appear significant and to examine them in light of the origins and functioning of grievance procedures in the private sector. The private sector experience yields some clues as to how the procedures are likely to work in the academic environment, providing proper allowance is made for differences in organization structure, processes, and employment conditions. In the papers that follow, we shall perhaps have an opportunity immediately to test these speculations by confronting them with actual experience in two universities.

The purpose of today's meeting is to explore the impact of collective bargaining on organizations in higher education. The sense of the morning meeting was that introduction of the concepts and techniques of collective bargaining has an effect on the structure of decision-making. Implicit in this afternoon's discussion is the question whether grievance procedures serve mainly to give effect to the changes implied in the negotiated agreement, or whether negotiated grievance systems are likely to exercise a separable, independent role in shifting the centers of real action and power in the organization.

An important way of regarding the negotiated formal grievance procedures in a work organization is to note that they provide a system of due process. How important this is to members of the bargaining unit and to special interest groups within it depends on the efficacy of the system it displaces or which it supplements. In the private sector unions won recognition, collective agreements, and grievance procedures in face of vigorous, sometimes violent opposition of employers. The right granted a union member to have his grievance heard and dealt with by high level managers and ultimately by outside arbitrators represented a significant extension of his rights on the job. Factors other than unionism were undoubtedly at work, such as conscious personnel policies introduced in the larger firms. But the break with preceding practice in factory and mill was sufficiently sharp to lead some students, Benjamin Aaron, for

example, to describe "this system of 'industrial jurisprudence,' considered as a whole, as one of the greatest achievements of our society."[1]

This leads us to the following question: Does the existence of an appeals system derived from collective bargaining similarly enhance the ability of individuals and groups to assert and defend their rights as members of a college or university faculty?

The answer to this question will ultimately be sought in empirical studies as experience grows in the actual operation of grievance systems in colleges and universities. But we may anticipate that it will depend on some or all of the following factors: composition of the bargaining unit; scope of the grievance clause in the contract; the climate of collective bargaining; and the quality of pre-existing appeals machinery. Each of these will be discussed briefly.

Composition of the Bargaining Unit

The larger the scope of a bargaining unit the greater, in general, is the possibility of divergent group interests within the component membership. The ancient argument for pure craft unionism had some such rationalization in opposing industrial unions. Community of interest is one of the chief criteria for regulatory agencies in carving out appropriate bargaining units, but not all units are scrutinized by such agencies. Thus, the units that cover many campuses and diverse professional functions are more likely to end up with grievances founded on claims for improved relative status. Also the increased legal and moral support for equality of treatment of minority groups included in the bargaining unit may lead such groups to regard the grievance machinery as an appropriate device for improving their relative position.

The point is that an important issue is masked in discussion of a "community of scholars" in which the "faculty" is treated as a more or less homogeneous class or category. In the operation of internal grievance procedures in university organization, the use of the machinery by drawing on the contract terms or the political weight of the bargaining agent is of differential importance to various groups among the faculty.

But the university organization has an additional attribute which will influence the pattern of use of the grievance machinery, and that is the blurry lines of managerial hierarchy. If there is traditionally a pre-eminent role for the faculty in institutional government, it lies in decisions with respect to its own membership. The AAUP 1966 Statement on Government of Colleges and Universities holds that: this area includes appointments, reappointments, decisions not to reappoint, promotions, the granting of tenure, and dismissal." The rationale for this claim to self-regulation is that "scholars in a particular field or activity have the chief competence for judging the work of their colleagues." This justification the profession of professors holds in common with the other recognized professions.

What this comes down to is that one's seniors in rank in a department or discipline have the responsibility and power to evaluate and to make academic personnel decisions. The process by which neophytes become socialized into a profession is designed to ensure that the paths to evaluation and acceptance or rejection by one's seniors will be acquiesced to and become part of normal expectations. The fact is that collective bargaining weakens the force of this tradition and the grievance machinery supplies the means to those who are ready to challenge the claim to professional objectivity of their colleagues. (And, parenthetically, they may be right.) The problem then arises as to whom is responsible for adverse decisions on appointment or reappointment. In the private sector the supervisor is a managerial representative appointed by and responsible to the next higher level in the hierarchy. This is clearly not the case in colleges and universities where initial decisions are made at the department level. Although faculty bargaining groups may have no intention of altering the traditional path to faculty membership and promotion, events may logically and inevitably move them in that direction. For the processing of a grievance which claims an unfair or erroneous decision at the departmental level places a higher administrative authority in the position of automatically defending a departmental decision on grounds of faculty responsibility, or of upsetting it and thus nibbling away at the principle of faculty control. To avoid this problem of adjudication administrators will at least seek to enforce more uniform adherence to rules governing the

timing of decisions on faculty status at the department level and insist on clarity in understanding of the conditions of appointment and reappointment. But it seems possible that because grievances will at least to some extent claim error in evaluative judgment, pressure towards bureaucratization will occur. Department chairmen and senior faculty will be obliged to follow more formal guidelines in reaching their decisions and the scope for independent judgment is likely to be constricted.

In this connection it is instructive to consider the findings and decisions of the National Labor Relations Board in two representation cases: the C. W. Post Center of Long Island University in April 1971; and Adelphi University in February 1972. In the Post case, it is pointed out that this was "the first case in which the Board has been called on to make appropriate unit determinations in regard to university teaching staffs."[2] As to whether faculty members, because they effectively make recommendations on faculty status, fall within the definition of employees protected by the Act, the Board says: "The policymaking and quasi-supervisory authority which adheres to full-time faculty status but is exercised by them only as a group does not make them supervisors...or managerial employees within the meaning... of the Act," and the Board consequently held "that they are entitled to all the benefits of collective bargaining if they so desire."[3] Second, the Board found that department chairmen had authority to make effective recommendations as to hiring and change of status of faculty members and other employees and excluded them from the unit as supervisors.

In the case of Adelphi University, the Board had to decide whether the fourteen faculty members elected by the faculty at large to a university-wide personnel committee and with important authority effectively to recommend in respect to faculty status, were eligible for inclusion in the professional unit. The decision again followed the principle that authority over a faculty member's status exercised by the faculty as a group on the basis of collective discussion and consensus was not sufficient to render the individual members of such a group supervisors under the Act. But the Board in its decision went on to make the following interesting comment:

> The difficulty both here and in Post may have potentially deep roots stemming from the fact that the concept of collegiality wherein power and authority is vested in a body composed of all of one's peers or colleagues, does not square with the traditional authority structures with which this Act was designed to cope in the typical organizations of the commerical world. The statutory concept of "supervisor" grows out of the fact that in those organizations authority is normally delegated from the top of the organizational pyramid in bits and pieces to individual managers and supervisors who in turn direct the work of the larger number of employees at the base of the pyramid.
>
> Because authority vested in one's peers acting as a group, simply would not conform to the pattern for which the supervisory exclusion of our Act was designed, a genuine system of collegiality would tend to confound us. Indeed the more basic concepts of the organization and representation of employees in one group to deal with a "management" or "authoritarian" group would be equally hard to square with a true system of collegiality. Nevertheless, both here and in Post, the collegial principle is recognized and given <u>some</u> effect. (Italics in original)[4]

The decision goes on to say, because ultimate authority does not rest with the peer group but rather with the Board of Trustees, "...these faculty bodies are not quite either fish or fowl. On the one hand they do not quite fit the mold of true collegiality. But on the other, surely they do not fit the traditional role of 'supervisor' as that term is thought of in the commerical world or as it has been interpreted under our Act."[5]

The chief point to be made in this review of the dilemma faced by the Board is that a bargaining unit may encompass diverse groups and interest without necessarily affecting the stability of collective bargaining, which is the ultimate purpose of the search for "appropriateness" in unit designation. But the blurry nature of the managerial structure may come to plague the relationship through the opera-

tion of the grievance machinery. In the decisions referred to, the Board excluded department chairmen from the unit; when chairmen are included, the problem is obviously compounded.

Scope of Grievance Procedures

Whether the rights to due process of bargaining unit members are enhanced depends on the scope of the grievance procedures provided in the contract. In the early stages of its development in the private sector employers sought to restrict the grievance procedures to the terms provided in the contract. But the contract cannot begin to take account of the myriad issues which arise between employees and their immediate supervisors in the course of work. Even if the agreement fails to cover issues that arise, the existence of the machinery gives the worker greater status and force in raising matters that grow out of the feeling of personal wrongs or injustice. In fact, writers like Selekman emphasized this function of grievance systems in providing outlets for human interplay at the work place.

The conception of grievance procedure as an instrument to protect and apply the limited job rights of workers secured through the union's collective bargaining is too limited a view. The existence of the procedure tends to promote imdependence among workers and autonomy of managers in the workplace. The existence of the machinery creates additional functions of administrative work and problem-solving. This allows grievance handlers to expand their activities to probe the boundaries of ambiguity in an agreement and to seek modification of, and adjustments in its terms and provisions. In other words, much bargaining goes on at the shop floor level. This is frequently how work rules get established or changed at the lowest levels.

Some such process is likely to characterize the operation of grievance systems under faculty agreements. The scope for such extension of the agreement will depend initially on the scope specified for the grievance machinery in the contract. Of the thirteen agreements mentioned earlier, only two specifically limited grievances to the interpretation, application, or violation of the contract. One of these limits grievances with regard to tenure, appointment, reappointment, and dismissal only to procedural

questions, apparently with the intent of preserving peer judgment in matters of faculty status.

On the other hand, nine of the agreements allowed not only grievances involving the interpretation, application, and violation of the negotiated contract but also those evoking established institution rules and regulations. Some of the agreements with this broad grievance scope excluded some issues. For example, the SUNY Agreement excludes termination for cause and allows only procedural violations of institutional policies with regard to appointments and promotions. The Rutgers Agreement allows only procedural questions with regard to tenure and promotion.

A key element in the grievance procedure available to the employees in a firm in the private sector is the right to carry a grievance to arbitration by an outside neutral. It seems clear that the incorporation of a similar right in college or university collective agreements enhances the rights of a faculty member grievant to due process. In the previously mentioned agreements we found nine with provisions for arbitration. Some of these restricted arbitration to procedural questions. If one reads the experience available it is possible to predict that the use of arbitration as a terminal step will increase. The trend in the lower schools has been in this direction. Studies of about 400 agreements in the New Jersey schools for three successive years show binding arbitration provisions increasing from 53 in the first year and 66 in the second, to 82 in the third year. In addition, in the third year 110 agreements provided for advisory arbitration.[6]

Climate of Collective Bargaining

The virtue of grievance machinery is its usefulness as a device for resolving conflict. Most grievances, it will be remembered are solved in the early steps of the procedure. But it may also be used as a weapon in channeling worker discontent to maximize pressure on an employer. A foreman or industrial relations office may be harassed by being flooded with grievances, or grievances may be piled up to serve as evidence of worker insistence on winning a particular benefit in subsequent negotiations.

The point is that the operation of the grievance system will be affected by the general tenor of the relationship between the parties. In reverse, the uses made of the machinery by bargaining unit members will color the relationship in its negotiation phase.

In any event it seems clear from experience in the private sector that grievances tend to be high in number in the early stages of a relationship. The union is concerned with demonstrating its effectiveness and workers are found with a supply of pent-up dissatisfactions, the more so as rivalry between groups competing for representation rights continues beyond recognition of one of them.

While these prepositions drawn from private sector experience will hold, by and large, in academic bargaining, some important differences may be noted. In the private sector union contract administration at the shop floor level is the training ground for union officers. Union office is usually a source of prestige and status, and is very frequently seen as a means of escaping from a humdrum job. Faculty bargaining representatives who become active in their associations obviously enjoy the leadership role, and regard themselves as making a contribution to the effectiveness of their institutions. But they consider that their tenure is short, to be relinquished to others as they return to their professional pursuits. We had some evidence of this in the experience of professional engineers unions in the fifties when they flourished for a short time. Moreover, in the handling of faculty grievances, winning frequently implies gaining something for some members of the bargaining unit, at the expense of other members of the unit.

By fortuitous circumstance, and having nothing particularly to do with the climate of relations, grievances in colleges and university units have been higher than they might have been. The machinery has become available to faculty members at a time when the market for college teachers is particularly depressed and the alternative to nonreappointment is bleak, inducing resort to grievances which question the judgment or the procedures by which decisions were made.

Availability of Pre-existing Appeals Systems

In the voluminous debate and discussion of organization and bargaining by public employees during the 1960s, attention

was focused on questions of recognition and on contract negotiations, to the relative neglect of the implications of organization for the contract administration. One reason for this was that the public sector agencies had long ago introduced mechanisms through which employees could appeal decisions of their supervisors. Civil Service appeals systems in fact outdated private sector negotiated grievance procedures.

Colleges and universities have obviously varied greatly in the rigor of the procedures they recognized. In debates preceding the recent wave of faculty organization and bargaining, Bertram Davis, general secretary of the AAUP was willing to concede that "given the choice solely between administrative tyranny and the collective bargaining naively trumpeted by the union as an academic panacea, a faculty member not totally insensitive to his environment would probably have little hesitation in going the union way."[7]

Colleges and universities range all the way from those in which traditions of due process are deeply imbedded by long tradition and practice, to those where decision-making power is strongly centralized in the president and/or trustees and used with little regard for due process. The prevalence of the latter type is amply documented in the reports of Committee A of the AAUP. Even in schools which have adhered to impeccable appeals systems, the operation of grievance mechanisms will tend toward formalization of procedures governing grievances involving terms of the agreement and the rules and regulations not spelled out in the contract. But it goes without saying that the introduction of grievance procedures through the contract will enhance the due process rights of faculty members in institutions where none existed, or where the rules were treated in a cavalier fashion.

In summary, whether those involved intend it or not, faculty bargaining may well carry with it the seeds of fundamental change in the institution; I have suggested that the operation of grievance procedures will represent an important channel to this result.

NOTES

[1] Monthly Labor Review, August, 1971, p. 55. Excerpted from a paper presented at the Third Annual Collective Bargaining Forum by the Institute of Collective Bargaining and Group Relations.

[2] 77 LRRM 1002

[3] 77 LRRM 1003

[4] 79 LRRM 1556 ff.

[5] 79 LRRM 1556

[6] New Jersey School Boards Association, Negotiations News. Vol. 1, No. 1, November 23, 1971.

[7] AAUP Bulletin, American Association of University Professors, September 1963, pp. 317-318.

RESOLVING FACULTY GRIEVANCES AT RUTGERS UNITVERITY

Richard W. Laity
Vice-President and Chairman
Committee A
Rutgers University Chapter
of AAUP

Before discussing the developing faculty grievance system at Rutgers University, some background on Rutgers would be pertinent. Rutgers is the only state university in New Jersey and, though Rutgers is New Jersey's land grant university, it did not become Rutgers - The State University until 1945. Rutgers' origins go back to 1766 when it was founded as the eighth colonial college. Public higher education in New Jersey which includes eight state colleges, 17 community colleges, the Newark College of Engineering and the College of Medicine and Dentistry of New Jersey as well as Rutgers is under the general supervision of a Board of Higher Education which was established in 1966. All of these institutions except one community college are now bargaining with their faculties.

Following the passage of New Jersey's public employee collective bargaining law in 1968, the faculty recognition process at Rutgers was concluded in February of 1970 when 65 percent of the bargaining unit signed cards indicating a preference for the AAUP as its bargaining agent. The Rutgers Council of AAUP Chapters, with the recent addition of graduate assistants, now represents more than 2,000 faculty and about 900 teaching and research assistants at three main campus centers -- New Brunswick, Camden, and Newark. (Faculty and teach-

ing and research assistant grievances are considered under separate procedures.)

In late 1970, the parties concluded negotiations on an initial agreement and negotiations were immediately reopened on all issues. The second round of negotiations were concluded shortly before President Nixon's wage-price freeze in the summer of 1971. We are now well into our third round of negotiations, almost a year at this point, and the prospects for an immediate settlement are not bright.

Description of Grievance Provisions. With the signing of the second agreement between the AAUP and the Rutgers administration, a detailed mechanism for processing faculty grievances replaced informal procedures previously available to the faculty. Implicit in the development of the procedures which I will describe was the conviction of both the AAUP and administration representatives that the unique character and mission of a university faculty must not be placed in jeopardy by immediately modeling grievance mechanisms on principles that govern labor-management relations in the conventional industrial context. New ground was being broken, and it was anticipated that experience with the initial procedures would point the way toward future revisions.

The contract defines a grievance "as any dispute or difference concerning the claimed violation of any provision of this agreement or the claimed violation of established University regulations and procedures regarding tenure or promotion." To prevent any interference with matters involving academic judgment, the following phrase was incorporated into the agreement: "It is understood that this agreement in no way diminishes the responsibility of faculty, department chairmen, and of deans, directors and other appropriate administrative officials for the exercise of academic judgment." The meaning of this phrase was to be a source of many problems.

After defining what constitutes a grievance, the negotiated procedures set forth a sequence of up to five steps to be followed as far as may be necessary to effect the ultimate disposition of a particular case. Two levels at which formal hearings could be conducted before a judicial body were included. The first of these delegated to the existing College Committee of Review adjudicating functions based upon oral and written testimony submitted in the course of an adversarial proceeding involving the appellant and an appropriate

representative of the administration (usually the dean or director of a college or corresponding academic unit.) Second, a "higher court" known as the University Appeals Committee was established. Composed of six members, three appointed by AAUP and three by the central administration of the University, this group could conduct additional hearings for the purpose of arriving at a consensus -- upholding, modifying, or revising the decisions of a College Committee of Review. The decisions of the University Appeals Committee were advisory to the President and the Board of Governors.

Certain provisions for "due process" at all formal hearings that had not previously been in practice at hearings of College Committees of Review were spelled out explicitly in the agreement. The most significant of these were (1) the right of either party to confront and cross-examine all witnesses, (2) the appellant's right to have one or two AAUP representatives present, and (3) the right of the appellant or his counselor to examine all documents pertaining to the case so long as the confidentiality of the writer was preserved where letters of recommendations were obtained from outside sources.

Experience with grievance process. To date (October, 1972), twenty-four grievance cases have been processed under the negotiated grievance mechanisms. Ten of these cases were handled informally, fourteen formally. About a dozen additional individuals made an initial contact with Committee A but did not pursue their cases, often because Committee A did not encourage them to do so because of weak cases.

Of the cases proceeding to formal steps of the procedure which have been decided to date, the individual faculty member has won his case about half the time. Of the ten cases handled informally, six were resolved to the satisfaction of the grievant, two were dropped and two are pending.

In terms of the types of issues grieved, tenure grievances accounted for half of both the formal and informal cases processed. The other twelve cases involved a number of issues, including non-promotion to full professor, failure to grant salary increases, right to a three-year appointment and insufficient notice of termination. A unique aspect of faculty bargaining was illustrated by the fact that in many of the tenure cases it was the faculty member's departmental col-

leagues who were being grieved against. The remaining tenure grievances were lodged against a college appointments and promotion committee and/or dean (three grievances) or the central administration or Board of Governors (four grievances).

Problem areas. In processing these faculty grievances, a number of problem areas developed. Some problems arose because certain aspects of the grievance process were inadequately or ambiguously designed. A changeover in the administration also produced or reinforced shortcomings in the procedures. One of the most difficult problems was to make a distinction between procedural violations and substantive matters of academic judgment. As indicated previously, an attempt was made to restrict grievances to procedural violations. However, in practice, this distinction was difficult to observe since there were a number of cases in which the decision to non-reappoint or deny tenure to a faculty member appeared to be discriminatory, even though procedural requirements had been met. In cases of this type, most involving women or minorities, the administration, though under considerable pressure to leave matters of academic judgment alone, permitted the cases to be processed. However, proving discrimination against women or minorities proved to be a difficult task due to the typical problem which arises in evaluating faculty teaching and research productivity. What standard of comparison for the grievants work is used? If the grievant's department is used, a number of the grievant's tenured colleagues often appear to be less meritorious. This is particularly the case if a department is attempting to upgrade itself.

Another problem arose concerning the role of the President in grievance handling. He is the last appeals step in the grievance procedure. In the estimation of the AAUP, the original intent was that the President would overturn the rulings of the University Appeals Committee only in unusual circumstances. However, this intent apparently escaped a new President who often overturned or modified the decisions of the University Appeals Committee, some of which had been unanimous. Alterations to the grievance process which will hopefully clarify the President's role are now being negotiated. Binding arbitration is not an alternative under consideration since the state has not permitted any employee organization representing state employees in New Jersey to negotiate it.

Though the grievance procedure proscribed time limits at most steps, no time limit was set for the President's response. Since most of the formal grievances went to the last step, this was an important omission, particularly in an academic setting where employment is not automatically continuous from year to year. Many cases have carried on for months without resolution, particularly cases which have been remanded for correction of procedural violations. In the meantime, complications arise for the grievant whose appointment has not been renewed for the coming year. In most cases at Rutgers where this problem has arisen, the grievant has been retained in some capacity until the matter has been resolved. The difficult question of what to do when an additional temporary appointment leads to automatic tenure has not arisen as yet at Rutgers. We hope to reduce some of the time lapse which has occurred in grievance handling by negotiating a presidential time limit in the upcoming agreement.

In cases pitting a grievant against his colleagues, it became clear that the AAUP had to evaluate its role in the grievance process. Previously, the AAUP had counseled only with the grievant, but this clearly left the grievant's colleagues, who were also members of the bargaining unit, without representation. In one particular case, a grievant who had retained the AAUP lawyer to represent him proceeded to sue his departmental colleagues, in part, for their testimony in the internal grievance proceedings. It is now the AAUP practice in cases of this type to counsel both sides of such disputes. Moreover, the AAUP lawyer is not available for retention by either side in the dispute. However, the AAUP's difficulty in getting interested and qualified faculty counselors has not made this policy easy to implement.

A number of other problem areas have occurred, for example, the use of lawyers, the treatment of confidential documents and the nature of the record to be kept of the proceedings, but enough have been illustrated to indicate the nature of the developing faculty grievance process at Rutgers University. We are working in current negotiations to smooth over some of the rough spots and to build a better system of individual due process. Despite the problems encountered, we believe that, on balance, the initial procedures were a significant improvement over pre-bargaining procedures in providing faculty due process. Previously, even the most flagrantly mistreated potential grievants were reluctant to set in motion the pre-

bargaining machinery, some of which had been provided for in University regulations. The cause of this hesitation was not difficult to trace: the designated faculty investigative body in each college or academic unit of the University, known as the "Committee of Review," rarely if ever affected a resolution favorable to the appellant. Indeed, the cards must have seemed most unfavorably stacked when the would-be grievant realized that this committee acted in an advisory capacity, generally delivering its report to the very dean whose action was often under appeal.

Even before the advent of collective bargaining at Rutgers, the local AAUP Committee "A" (Academic Freedom and Tenure) had established a commendable record in negotiating resolutions of some of the inequities that the older procedures had failed to reconcile. Under collective bargaining, the AAUP has continued to strengthen its capacity to protect individual faculty rights. Any unfavorable organizational impact brought about by our desire and our efforts to protect individual rights has certainly been within acceptable limits.

CUNY -- A GRIEVOUS STORY

David Newton
Vice Chancellor of Faculty
and Staff Relations
City University of New York

The City University of New York encompasses higher education from the community college through the graduate school. CUNY consists of eighteen senior and community colleges, a graduate school, an affiliated medical school, two urban skill centers, some 200,000 students, 16,000 instructional staff members and 10,000 non-instructional staff employees.

The University is governed by the Board of Higher Education, whose twenty-one members are appointed by the Mayor of the City of New York. The Board operates under the legal authority vested in it by statute and its own bylaws.

As a public employer under the New York State Taylor Law (Public Employees' Fair Employment Act), the Board in 1969 negotiated two separate agreements with the Legislative Conference (NEA affiliate) and the United Federation of College Teachers (AFT affiliate), respectively.[1]

In identical language, the separate contracts provided for informal avenues for handling complaints and a formal three-step grievance procedure -- a two-stage administrative appeal, culminating in binding arbitration -- as the "sole method used for the resolution of all complaints and grievances." Individuals, independent of the collective bargaining agents, were eligible to grieve on their own behalf and have access to arbitration.

It was clearly the University's intent to encourage resolution of disputes at the local level; the informal complaint procedure provides for resolution of disputes at the college department level and the formal Step One grievance process requires resolution by the college president or his designee. It was also clearly the University's hope that "academic judgment" would be protected by restricting the processing, beyond the formal Step Two level (resolution by the Chancellor or his designee), of any grievance based upon "academic judgment" and by restricting an arbitrator from substituting his judgment for the collegial academic judgment.[2]

The University's hope and intent notwithstanding, its grievance and arbitration experience has been formidable. The sheer number of cases is awesome; during the recently expired contract period -- September 1969 - August 1972 -- over 800 Step One grievances were filed with the colleges, over 500 Step Two grievances were filed with the Chancellor's office, and over 200 cases were filed for arbitration.

As might be expected, the overwhelming majority of grievances (95 percent) related primarily to the self-interest of the individual with regard to reappointment, promotion, and tenure. Parenthetically, not a single individual grievance was filed by any member of the faculty with regard to "workload" -- no one complained about having an unreasonable teaching schedule, or an excessive student load, or excessive number of contact teaching hours! The remaining 5 percent of the grievances pertained to University-wide or college policies and/or contract interpretation. These latter "class action" grievances, although a small fraction of the total number of grievances, required decisions that affected hundreds, if not thousands, of the University's employees.

On the surface, these statistics would seem to suggest that CUNY is not only a giant, but a malevolent giant. The fact of the matter is that an analysis of the grievance record shows that over 98 percent of the cases were not leveled against the University. They were, rather, charges filed in objections to actions of the faculty qua faculty, to academic judgment by peers, or to actions of department chairmen who, paradoxically, are themselves members of the collective bargaining unit represented by the union.

The point is graphically illustrated by an analysis of the 61 arbitration awards received to date. Forty-six of these cases relate to questions of reappointment or tenure. In only eight of these 46 cases was the grievance directed against a college president or college official, while 37 cases were initiated against the actions of an elected faculty committee. Additionally, one case involved a grievance brought by the union against University-wide procedures and guidelines for granting research awards, promulgated by a faculty committee. This Committee was itself a creature of the collective bargaining agreement and was charged with the responsibility of developing applying just such guidelines! The remaining 15 cases relate to contract interpretation (method and base of compensation, use of titles, etc.), including interpretation of the Board of Higher Education Bylaws (selection of department chairmen, agency law, etc.).

In short, in its grievance and arbitration role, the University administration was cast in an adversary relationship with the collective bargaining agents of its faculty largely as a result of defending accepted academic practice and protecting the faculty's role in institutional decision-making.

How does one account for this staggering number of grievances? It seems to me that there are three significant contributing factors:

1. The academic climate itself is not conducive to contract compliance. The academic committee process like "the mills of the gods," grind slowly but we discovered that it does not "grind exceeding fine" -- at least not fine enough to avoid procedural contract violations. CUNY, like most institutions of higher education, was ill prepared, historically and structurally, to function within the formalistic machinery of a collective bargaining agreement. Twenty separate, relatively independent and autonomous colleges were suddenly, each and all, required to conform to a single standard of "terms and conditions of employment" contractually enforceable.

2. The existence of two competing unions with intense rivalry for membership and faculty support vitiated any attempt at informal settlement of issues or settlement short of arbitration. Each union was fearful of public accusation by its

rival of "selling out" the faculty and staff. One union took virtually every case to grievance and arbitration, partially to win political points as being "militant." A case rejected by one union became fair game for the other to press, in the role of the grievant's "personal representative." The unions were most reluctant to drop any case filed for arbitration -- regardless of the merit -- for fear of alienating even a small number of potential members or alienating future voters in a certification election. We hope the "one-upmanship" factor will be a thing of the past now that the LC and UFCT have merged as the Professional Staff Congress.

3. The grievance and arbitration process was used to challenge two basic concepts:

a) The jury system of peer evaluation based upon "academic judgment," and

b) The system of tenure utilizing a probationary period of employment without presumption of reappointment from year to year, short of being tenured.

Grievances based upon contract procedural violations were filed by the hundreds, with one objective -- to nullify the academic judgment of peers.....when the result was a negative decision. The remedy sought in each case was to make the grievant "whole" by reappointing, promoting, or tenuring, despite the negative decision on such action by an elected department or college faculty committee.

Here is one of the most illustrative cases.

At Brooklyn College a person was denied reappointment on the basis of academic judgment by peers. Reappointment would have conferred tenure. The college failed to observe certain procedural requirements under the union contract. The University acknowledged the procedural errors and offered to reappoint, without tenure, for purposes of contract compliance and academic re-evaluation of the individual. The union and the grievant refused the offer and insisted on arbitration. The arbitrator ignored the issue of "academic judgment" and rules, solely on the basis of the college's procedural errors, that the person be reappointed with tenure.

Since arbitral awards tend to become precedent setting, if not actually "binding precedents," the implications of this arbitrator's decision were especially critical for the academic community, and the University appealed this decision. The arbitral award was sustained by a lower court. On further appeal, however, the Appellate Division of the State Supreme Court upheld[3] the right of the faculty to make academic judgments of their peers and found that the arbitrator had "endeavored to transmute procedural irregularities into a power gratuitously assumed to himself to confer tenure, although the exercise of 'academic judgment' alone governs the conferring of tenure."

The Court found it difficult to believe that the union's contract

> was intended to strip the Board of Higher Education of its basic power to determine the condition of excellence, required for the achievement of tenure, or that the Taylor Law, with its obligations to bargain as to all terms and conditions of employment (Civil Service Law, art.14), was intended to allow such an abrogation.

The Court noted that while there may have been a failure to observe certain procedural requirements under the union contract, "this did not authorize the Arbitrator to transmute charges of incompetency into the excellence required for tenure."

Further, the Court states, "that tenure should not be conferred by a 'backdoor' maneuver...because of the intrinsic value the courts attach to tenure."

It is the Court's considered judgment

> that the only fitting solution is that offered by the University. The offered solution, improvidently rejected by respondent, does no violence to, and gives appropriate recognition to the conceded technical breaches of the Collective Bargaining Agreement and that public policy which decrees the need for requisite competence

> before the achievement of tenure. Accordingly, we embrace the offer of the University as a generous and just resolution of this controversy, and as an act representing overall justice; and if found fit, there seems to be no reason why petitioner should not be designated nunc pro tunc.

A continuation of the then current practices of arbitrators reversing academic judgment would have seriously endangered governance in CUNY and might have eventually deprived the faculty of their academic prerogatives and rights of self-determination. The Court's decision, however, in no way hinders the rights of the faculty to due process with the University.

A review of arbitral awards to date finds that most of them still involve the nota bene and the question of what constitutes an inarbitrable "academic judgment." But it is also apparent that a body of arbitrators has been educated to academic values and the world of academe as a result of CUNY's experience with arbitration. Inceasingly, arbitral awards conclude with statements by arbitrators such as:

> In short, I find that by express contract provision the parties have legislated the specific remedy in such cases, and thereby have divested the arbitrator from authority to fashion a remedy.[4]

Or

> It thus becomes clear that the intent of the nota bene provisions was to preserve and maintain the rights of the Board to exercise academic judgment in the maintenance of excellence in the public school system, and not to have that right -- in situations involving tenure -- invaded or assumed by the arbitrator.[5]

If naught else, when the full history of collective bargaining in higher education is written, CUNY may be given singular credit for contributing the largest number of arbitral awards towards the development of a common body of "Arbitral Law" in this field.

NOTES

[1]As a result of a two-unit structure, determined by the New York State Public Employment Relations Board, the Legislative Conference (LC) represented the tenure bearing-professorial ranks and the United Federation of College Teachers (UFCT) represented all part-time instructional staff and full-time lecturers.

[2]Nota bene: Grievances relating to appointment, reappointment, tenure or promotion which are concerned with matters of academic judgment may not be processed by the Conference beyond Step Two of the grievance procedure. Grievances within the scope of these areas in which there is an allegation of arbitrary or discriminatory use of procedure may be processed by the Conference through Step Three of the grievance procedure. In such case the power of the arbitrator shall be limited to remanding the matter for compliance with established procedures. It shall be the arbitrator's first responsibility to rule as to whether or not the grievance relates to procedure rather than academic judgment. In no event, however, shall the arbitrator substitute his judgment for the academic judgment. In the event that the grievant finally prevails, he shall be made whole.

[3]The Legislative Conference of the City of New York v. Board of Higher Education of City of New York. 330 N.Y.S. 2d 633 (April, 1972).

[4]Zakin v. Kingsborough Community College, AAA 1339 0732 70, Eric. J. Schmertz.

[5]Kreutner v. New York City Community College, AAA 1339 0155 72, Isreal Ben Scheiber.

DISCUSSION -- AFTERNOON SESSION

Dick Laity. Dr. Newton, you say the unions, the rival competing unions, pressed as many cases as possible in order to gain support from the faculty. You also said that most of the grievances were against the faculty. I would have thought that this would have antagonized the faculty rather than converted them.

Dave Newton. Dr. Laity, there is nothing inconsistent in collective bargaining. You can stand on both sides of the fence at the same time. In the early days of collective bargaining at CUNY the Public Employees Relations Board certified two units with two different agents. One represented the professorial, tenured staff, or in the words of PERB, the heart of the University's tenured members, and that was the Legislative Conference which later affiliated with the NEA. The UFCT represented the full-time lecturers and all part-time people. The governance system at the university consists of having faculty elect chairmen. In each department the faculty elect five of their colleagues to serve as members of the promotion and appointments committee who sit as a jury does in judgment on their peers. The actions of these groups are protested by the union through their grievance mechanisms.

Jack Chernick. It strikes me that there's an additional reason for thinking there is no inconsistency, if you consider the choices available to a faculty member. Vigorous

prosecution of grievances is designed to win favor with those who have had occasion to present a grievance or who think they are in a position where they may wish to present one. These are most likely to be the active union supporters for whom the two unions compete. The tenured faculty members, those who are not likely to enter grievances, against whom in fact some of the grievances are directed, then have no choice -- they are offered two equally active unions.

Unidentified man. I would like to direct to Mr. Newton a point of detail which is well worth considering here. If I understand correctly, under labor laws you can't grieve against a member of your own unit. This creates a curious vacuum of responsibility. For us the thing that somebody grieves about is an action of a dean. This creates this anomaly. The poor dean is sitting in the middle because a faculty committee did something and you can't grieve against them because they're in your unit, so the poor dean gets this thrown in his lap and he is hit with the grievance. Do you care to comment on that situation?

Dave Newton. If the dean is sitting in the middle, then he deserves to get something thrown in his lap. Deans ought to be standing and working along with the rest of us. In answer to your question, you're quite right. Perhaps I misled some of you. The grievances in each and every case were filed against the University. But the grievances stem from actions not of university officials but of faculty committees. So that in effect the grievance is really against an action of the faculty committee. I think I pointed out that the number of grievances that addressed themselves to an action of a president or other university official was a total of eight over three years. The overwhelming number were against committee actions, but it appeared to be a college decision, because it is the college that turns down the tenure and the college that gives the affirmative decision for non-reappointment.

Unidentified man. What I have in the back of my mind is that collegiality and grievance procedures almost work at cross purposes.

Dave Newton. At this stage in the development of unionization in higher education, yes. Hopefully someday they will not work at cross purposes.

Dick Laity. I think that's a very important point and it's one that has disturbed me also. At Rutgers when you file a grievance, if it was your department that made the decision, the grievance is against the dean. This clearly defines the adversaries. The department members who made the decision can then serve as witnesses for the dean in a formal hearing. But the thing that does disturb us is that it leaves us open to the accusation that we are eroding faculty responsibility by acting as agents of the dean.

Unidentified man. Dr. Laity, you mentioned that at Rutgers there was no arbitration step in the grievance procedure. But you thought that one of the weapons that might be used if the faculty were not satisfied with the decision made by the President to reverse the decision of the appeals committee, was to take him to court. Was your President in fact ever taken to court and what happened if he was?

Dick Laity. In one rather celebrated case at Rutgers, an unanimous decision of the University Appeals Board was overruled by the President. The appellant promptly, without any AAUP advice or council, got his lawyer to file suit against the President and the Board of Governors. A show cause order was issued as to why he should not be given tenure. Shortly after that he was given tenure.

Dave Newton. Without, hopefully, deflecting the nature of the question, I would like to say something about weapons. We talked a little this morning about the use of strikes and the use of weapons for unions. I think what the faculty currently in the process of organizing and negotiating should recognize is that a strike works two ways. In fact, there were times in the last three months that I personally wished that the Taylor Law did not preclude strikes. There are some issues that really cannot be settled, either for management or for labor, except by strike. Let me share with you a dialogue that took place across the negotiating table with regard to the possibility of a strike by the Professional Staff Congress of the City University of New York. I told them that they could very well consider a strike, but that they should remember that when Albert Shanker calls a strike there are two million screaming school children that make life miserable for their mothers who in turn put the pressure on City Hall, and Mayor Lindsay caves in. When

the sanitation men go out on strike there is both figuratively and literally such a stink in the city, that City Hall and city fathers cave in and give the union what it wants. When the firemen and policemen go out on strike everyone is concerned about their health and safety and again the government capitulates. But if all of the sixteen hundred members of our faculty and staff went on strike, it would have little effect on the city because nobody would notice it. The public is not really with the union over wage issues, so faculty and unions have to think carefully about the use of the strike as a weapon, especially in public institutions of higher education when they have a third party to contend with, the public. If you can captivate the public's imagination to get them to empathize with you, then the strike has sense. If not, there's some real reason for considering other kinds of pressures, like negotiations.

Joe Orze. I would like to ask Professor Laity a question. I was target of a suit when I was sued for $3 million by the faculty. After a year and a half it was thrown out of court. The thing that I'm concerned about is, how can your committee at Rutgers be advisory and yet make a decision that they can appeal when it's overturned? Now this bothered me quite a bit in the morning and I wanted to ask you about it. The President is acting upon advice one way or the other, so I cannot see how a committee can be both advisory and decision-making. Could you explain?

Dick Laity. I don't know the details of the suit that was filed, but I suspect that the accusation was that in view of the length proceedings and deliberations that had gone into the judgment of the appeals committee, that the President was probably accused of being arbitrary and capricious.

Unidentified man. If I understood you correctly, Dr. Newton, you said that the contract provided for the individual grievance to go all the way up to arbitration by itself. Maybe this is an improper question for a faculty bargainer to ask, but what sort of madness was it that the administration negotiation team was willing to let the grievance go all the way by itself? What is the union doing that they were willing to let the grievance go all the way by itself without having any influence?

Dave Newton. It's a very proper question and Professor Pillote particularly may be interested in the answer. During the first negotiations, both sides of the table will represent people who are in the field of education. I still sign my income tax return as an educator. Additionally, the Deputy Chancellor and the Vice Chancellor on the negotiating team of the administration had recently come from teaching positions very concerned for their colleagues back on the campus and wanting to protect the faculty from possibly becoming a prisoner of the union. A prisoner in the sense that the faculty member as an autonomous professional should have the right as an individual to grieve on his own behalf. The union, also representing at that time an educational point of view, a collegial point of view, felt there was nothing wrong with this. It has become a burdensome chore, because the one thing that has happened is that where a grievant advocates something the union disagrees with, we hoped that a responsible union leadership would say, "sorry buster, this is just not going to be grieved." However, there's no control in that and in retrospect no one anticipated that when the matter of tenure or job security came into the picture, with the potential loss of earnings of some two or three hundred thousand dollars involved in the issue of tenure for a single individual, that most rational human beings would be willing to invest twenty-five hundred or three thousand dollars to hire a lawyer and go through the whole process of arbitration in the hope of winning the larger prize.

George Horton. I would like to pose a question, one particularly directed to Dr. Newton. We have found at Rutgers that in cases involving discrimination against minorities, the tendency of the people involved is to avoid the grievance procedures which are available, and go outside the University procedures, in many cases to court. What has been your experience in this area and how can one make this procedure attractive enough so that the existing procedures are used?

Dave Newton. Given the revolutionary nature of our times with regards to the women's movement and the legitimate seeking of redress by minorities, I don't know if you can make that procedure attractive enough. But I'm glad you raised the question. The question happens to be one of the negotiating items, and I don't think I'm violating any confidences, that we're currently considering. With the advent of HEW's Affirmative Action program and Executive Order 11425, most

of the large urban institutions of higher education have been hit hard. In fact, CUNY in the last four years has faced open admission and collective bargaining and now affirmative action. There's little doubt that each of these major movements has a significant impact on the institution and collectively will change the nature of higher education within the City University system. There is no doubt about it in my mind, we have been plagued with real and imagined grievances. We have a very strong women's liberation movement on campus, independent of the union. We have a very strong women's caucus within the union. We have pressures from all sides with regard to righting the inequities that do exist in the university with regard to women.

We find ourselves as an institution literally being badgered in the sense that, at the same time that the collective bargaining grievance machinery was instituted for a case of discrimination on the basis of sex or race, the individual hit the City Human Rights Commission with a complaint, the State's Human Rights Commission with a complaint, and HEW with a complaint. It was not unusual to get three subpoenas and a notice of a grievance filed on the same day, with the University having to face these issues in all of these different courts. During current negotiations we are trying to eliminate, to some degree, this particular onerous position. We don't think we have any right to limit the individual's statutory or constitutional rights, but we do think we have a right to say there will be a choice. You want to use the agencies, fine, you use the agencies, but then you give up your right to pursue this through the grievance machinery. If you use the grievance procedures, then you cannot use any of the other forums until you are all through with the grievance procedure, and that's what we're trying to work out at the moment.

Unidentified man. Professor Leity, you indicated that there was an issue now in dispute concerning access to confidential files. You mentioned some sort of an arrangement where a representative of the AAUP could have access to confidential information on appointment, reappointment, promotion, and tenure cases. I wonder if you could elaborate on the ground rules of that procedure and what issues are still in dispute. I have a hard time understanding how a representative from the AAUP can make use of that information to help resolve a personnel dispute.

Dick Laity. I'm concerned with the very last thing you said, how an AAUP representative could make use of that information to help resolve a dispute. Wouldn't this bear on whether or not the person had received fair judgment?

Unidentified man. Yes, this may or may not bear, but in actual operation what is the representative from the AAUP entitled to do with that information? How close can he come in trying to establish the creditability of the recommendation?

Dick Laity. I don't think I would be guilty of an impropriety to indicate the proposal that's on the table right now, because I think we're pretty close to an agreement on this. It calls for the appointment jointly by AAUP and the administration of one member of four faculty members chosen for this purpose, not specifically or otherwise involved with a grievance either in the department or hearing committee. This person would go through the file, read the letters, draw up a statement that essentially paraphrases those contents that seem most relevent to the case and which would in no way reveal the identity of the authors. This document would then be submitted at the hearing. All parties have access to it and no other information can be introduced unless it is made available to all parties.

Unidentified man. Dr. Newton, I have a question about the arbitration case you mentioned which went to court and for which you read part of the judge's decision. Was this under a binding arbitration provision in which the University and the faculty organization agreed in advance to accept the word of the arbitrator?

Dave Newton. Yes, this was under the contractual obligation of binding arbitration. It is very unusual when one takes an arbitrator's decision to court, and one takes a calculated risk in ruffling the feathers of arbitrators nationwide. In fact, one rarely does this because the tendency of the court is merely to sustain the arbitrator's decision under the binding contractual obligation. In this instance, we felt that this decision was such a bad decision and had such significant implications for our own and other academic communities that we had no choice but to fight it in the courts. In my brief talk, I indicated that we lost the battle on the first step in the lower court when the lower court sustained the arbitrator. We took it on appeal to the

appellate division and we won that decision three to one, which permits the union now to take it to a further appeal. They undoubtedly will. But at the moment a significant landmark decision upholding academic judgment has been made by a court.

Unidentified man. Dr. Newton, relative to this arbitration procedure and the fact that the arbitrator took a point of view which was contrary to what was required in terms of the procedure, did this lead both CUNY and the union to establish more definitive aspects to the arbitration procedure as far as the contract was concerned? In other words, did you spell out more or are you trying to spell out more in your future contracts as to what will be arbitrable or what will not be arbitrable as a result of this particular decision?

Dave Newton. This is a basic issue; we would like to limit this sphere of arbitration. The union understandably would like to enlarge it. The union would like academic judgment to be subject to arbitral decisions. At least the union would like an academic judgment or decision that is rendered as academic judgment but is really a discriminatory or arbitrary act to be subject to this system. I don't know how one would prove that an academic judgment is a discriminatory or arbitrary act. We're afraid to open the door and we're fighting very hard to keep it closed.

Unidentified man. We had a similar case that actually produced different results. In one of the few instances where we had agreed to have the arbitrator view the merits of the case, he switched it to strictly interpretations of the contract and procedures and denied the person the right to arbitration. The board decision to terminate the individual was therefore sustained. Later the board turned around and had its own procedures outside the union reinstate the individual a year and a half later with full back pay and with promotion and rank. It left the University with a very bad case. I think the problem of the scope of arbitration is something that we have to deal with very strongly in our contractual agreement. This is why I'm asking if you went beyond it.

Dave Newton. It is not unusual for human beings to act irrationally and one of the ways of avoiding this is to have a contract which spells out what can and what cannot be done

under the particular laws governing the negotiations of that contract. It's not uncommon for boards to reverse themselves or to pull the rug out from under their own negotiators.

George Horton. The question that was raised was whether it was possible to have arbitrary or capricious acts deriving from the peer judgment process. Our experience has been that if peer judgment was carried out in a fair, equitable, and reasonable manner, then people are willing to accept it. But we also found there have been many cases of peer judgment carried out in a grotesque way, situations where the people involved never went through the process of peer judgment. They simply terminated the individual without ever meeting in the usual way. That's one example. Another example is where a very small group made a decision in which they were simply not competent to make that decision. They did not have the necessary expertise. Examples of this kind abound and this makes me tend to believe that when there is a proper procedure established, and this seems to me to be the greatest advantage of a contract of this kind, the kinds of grievances that really upset you tend to disappear in time.

SUMMARY

James F. Begin
Associate Research Professor
Institute of Management and
Labor Relations
Rutgers University

What can be said about the impact of collective bargaining on institutions of higher education based upon the experiences reported in the papers at the conference? Necessarily, only tentative answers can be advanced at this point since the faculty bargaining movement in most four-year institutions is still in its infancy. However, some initial observations are possible.

As indicated by the papers presented at this conference, the potential range of outcome in respect to the impact of collective bargaining on traditional modes of faculty governance is broad. It seems that whether viable compromises can be worked out between the dual faculty decision-making systems, collective bargaining and senates, may largely depend on the contextual factors which exist in a given collective bargaining relationship.

As reported by Dr. Walters, the contracts at Boston State and Worcester State Colleges in Massachusetts attempt to establish a faculty governance system, thus fitting what Dr. Garbarino called in his paper "the constitutional model." In this type of decision-making model the faculty bargaining agent agrees to delegate most of its consultation activities, particularly in regard to issues of educational policy, to

other bodies. However, it protects this transfer of authority by giving contractual status to the other decision-making forums. For example, in the Worcester State contract, four tripartite committees including student, faculty, and administration representation were established to provide input on undergraduate curriculum, graduate education, admissions, and college affairs.

Presumably, substantive decisions on salary and related matters would be made in the traditional union pattern and incorporated into an agreement, while a procedural agreement would be made to codify procedures for making input on other kinds of decisions. However, the non-negotiability of economic matters in the Massachusetts State Colleges was probably one reason that the parties were able to agree on the contractual interaction of collective bargaining and faculty governance. The absence of distributive economic issues from the bargaining is more likely to permit a problem-solving discussion of faculty governance.

At Central Michigan and Rutgers, it appears that a dual system of faculty participation is developing which incorporates both collective bargaining and traditional governance mechanisms. This decision-making model differs from the constitutional model primarily in the way in which the traditional governance procedures are informally related to the bargaining process. Here there are no formal, contractual relationships between the two systems of governance; traditional procedures are preserved through informal agreement among the parties at the table or through broad reference in the agreement.

The relationship between the processes at these two institutions has not been formalized, as in Massachusetts, in part because the faculties at Rutgers and Central Michigan will not support any tampering with the established traditional procedures. As Dr. Pillote indicated, this was the reason for the dual arrangement at Central Michigan; and at Rutgers the University Senate on two occasions, in the past year, rejected attempts at structural changes. The model being developed at the City University of New York seems at this point to be moving towards a more traditional union decision-making model wherein the faculty bargaining agent is the sole conduit for faculty input on all matters.

To the extent that the constitutional and the informal models discussed above develop and stabilize, collective bargaining and traditional governance procedures are molded together in a unique way. However, as Dr. Garbarino points out, a number of factors may operate to make such an amalgum unstable, particularly where, as in the informal model, the relationship between traditional governance procedures and collective bargaining is not clearly defined. Difficulties in working out the respective jurisdictions of the two component means for faculty participation are certain to arise over crucial issues. Indeed, disputes which arise over the forum in which issues are to be considered may make the constitutional model and, in particular, the informal model unstable over the long run.

Additionally, a faculty organization may be reluctant to delegate its consultation activities on educational policy to another body because of the risks involved. There is no guarantee that a senate which may well be composed of different constituencies will produce decisions considered satisfactory by the faculty organizations. Nor would the bargaining agent receive appropriate or adequate political credit for matters resolved in other forums. Competition from other faculty organizations, non-faculty elements within the bargaining unit which place no value on faculty governance, faculty union leadership unwilling to preserve traditional means of faculty governance, and a high conflict bargaining relationship are other factors which could create instability in dual governance mechanisms. Nevertheless, at least three of the organizations whose bargaining activities were described in conference papers are developing bargaining systems which to date at least reflect traditional faculty governance procedures.

The experiences at Rutgers and CUNY with regard to the operation of the grievance process appear to be markedly different. At CUNY, where competition between two employee organizations contributed to an adversary relationship, there have been 300 first step grievances over a three-year period. In contrast, at Rutgers in a similar period, but in an environment much less prone to adversary relationships, there have been fewer than three dozen grievances. Despite these apparent differences, experience with the grievance process at Rutgers and CUNY show some important similarities. Many of the grievances from both institutions derived from

actions of a grievant's peers in decisions involving tenure, promotion, or non-reappointment. In such instances, there is little doubt that the grievance process provides a channel for increased external review of faculty peer decisions. Both Rutgers and CUNY have sought to limit interference with faculty judgment by restricting grievances to matters of procedure. However, at both institutions it appears that in practice it has been difficult to maintain a division between procedural matters and substantive matters involving academic judgment. As experience builds with the due process mechanisms provided by collective bargaining, as the parties adjust to the objective requirements of such a system, then challenges to faculty prerogatives may diminish as faculty peer judgments become less subject to question. In any event, faculty grievance mechanisms will be a major way by which faculty bargaining will bring about changes in practices at the departmental or school level with respect to the peer judgment process.

In conclusion, the papers presented at the conference illustrate that generalizations concerning the impact of faculty bargaining must be made with caution. Faculty bargaining appears to be producing different forms in response to the unique structural and behavioral characteristics of particular institutions or systems of higher education. In this sense, experience in higher education is duplicating that in the private sector where a variable collective bargaining system has developed under the influence of differential characteristics of industries and occupations. To the extent then that faculty self-governance is an integral part of an institution before bargaining, it seems reasonable to expect that essential elements of that tradition will survive as a faculty bargaining system evolves.

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